IMPERIAL CONFERENCE, 1926.

Inter-Imperial Relations Committee.

E. (I.R./26) Series.

REPORT, PROCEEDINGS AND MEMORANDA.

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Printed for the Imperial Conference. November 1926.

SECRET.

Copy No. 1

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Inter-Imperial Relations Committee.

REPORT.

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I.—INTRODUCTION.

We were appointed at the meeting of the Imperial Conference on the 25th October, 1926, to investigate all the questions on the Agenda affecting Inter-Imperial Relations. Our discussions on these questions have been long and intricate. We found, on examination, that they involved consideration of fundamental principles affecting the relations of the various parts of the British Empire *inter se*, as well as the relations of each part to foreign countries. For such examination the time at our disposal has been all too short. Yet we hope that we may have laid a foundation on which subsequent Conferences may build.

II.—STATUS OF GREAT BRITAIN AND THE DOMINIONS.

The Committee are of opinion that nothing would be gained by attempting to lay down a Constitution for the British Empire. Its widely scattered parts have very different characteristics, very

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different histories, and are at very different stages of evolution; while, considered as a whole, it defies classification and bears no real resemblance to any other political organisation which now exists or has ever yet been tried.

There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development—we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. *They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*

A foreigner endeavouring to understand the true character of the British Empire by the aid of this formula alone would be tempted to think that it was devised rather to make mutual interference impossible than to make mutual co-operation easy.

Such a criticism, however, completely ignores the historic situation. The rapid evolution of the Oversea Dominions during the last fifty years has involved many complicated adjustments of old political machinery to changing conditions. The tendency towards equality of status was both right and inevitable. Geographical and other conditions made this impossible of attainment by the way of federation. The only alternative was by the way of autonomy; and along this road it has been steadily sought. Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever.

But no account, however accurate, of the negative relations in which Great Britain and the Dominions stand to each other can do more than express a portion of the truth. The British Empire is not founded upon negations. It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security and progress are among its objects. Aspects of all these great themes have been discussed at the present Conference; excellent results have been thereby obtained. And though every Dominion is now, and must always remain, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled.

Equality of status, so far as Britain and the Dominions are concerned, is thus the root principle governing our Inter-Imperial Relations. But the principles of equality and similarity, appropriate to *status*, do not universally extend to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and questions of defence, we require also flexible machinery—machinery which can, from time to time, be adapted to the changing circumstances of the world. This subject also has occupied our attention. The rest of this report will show how we have endeavoured not only to state political theory, but to apply it to our common needs.

III.—SPECIAL POSITION OF INDIA.

It will be noted that in the previous paragraphs we have made no mention of India. Our reason for limiting their scope to Great Britain and the Dominions is that the position of India in the Empire is already defined by the Government of India Act, 1919. We would, nevertheless, recall that by Resolution IX of the Imperial War Conference, 1917, due recognition was given to the important position held by India in the British Commonwealth. Where, in this Report, we have had occasion to consider the position of India, we have made particular reference to it.

IV.—RELATIONS BETWEEN THE VARIOUS PARTS OF THE BRITISH EMPIRE.

Existing administrative, legislative, and judicial forms are admittedly not wholly in accord with the position as described in

Section II of this Report. This is inevitable, since most of these forms date back to a time well antecedent to the present stage of constitutional development. Our first task then was to examine these forms with special reference to any cases where the want of adaptation of practice to principle caused, or might be thought to cause, inconvenience in the conduct of Inter-Imperial Relations.

(a.) *The Title of His Majesty the King.*

The title of His Majesty the King is of special importance and concern to all parts of His Majesty's Dominions. Twice within the last fifty years has the Royal Title been altered to suit changed conditions and constitutional developments.

The present title, which is that proclaimed under the Royal Titles Act of 1901, is as follows :—

> "George V, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India."

Some time before the Conference met, it had been recognised that this form of title hardly accorded with the altered state of affairs arising from the establishment of the Irish Free State as a Dominion. It had further been ascertained that it would be in accordance with His Majesty's wishes that any recommendation for change should be submitted to him as the result of discussion at the Conference.

We are unanimously of opinion that a slight change is desirable, and we recommend that, subject to His Majesty's approval, the necessary legislative action should be taken to secure that His Majesty's title should henceforward read :—

> "George V, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India."

(b.) *Position of Governors-General.*

We proceeded to consider whether it was desirable formally to place on record a definition of the position held by the Governor-General* as His Majesty's representative in the Dominions. That position, though now generally well recognised, undoubtedly represents a development from an earlier stage when the Governor-General was appointed solely on the advice of His Majesty's Ministers in London and acted also as their representative.

In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.

It seemed to us to follow that the practice whereby the Governor-General of a Dominion is the formal official channel of communication between His Majesty's Government in Great Britain and His Governments in the Dominions might be regarded as no longer wholly in accordance with the constitutional position of the Governor-General. It was thought that the recognised official channel of communication should be, in future, between Government and Government direct. The representatives of Great Britain readily recognised that the existing procedure might be open to criticism and accepted the proposed change in principle in relation to any of the Dominions which desired it. Details were left for settlement as soon as possible after the Conference had completed its work, but it was recognised by the Committee, as an essential feature of any change or development in the channels of communication, that a Governor-General should be supplied with copies of all documents of importance and in general should be kept as fully informed as is His Majesty the King in Great Britain of Cabinet business and public affairs.

* The Governor of Newfoundland is in the same position as the Governor-General of a Dominion.

(c.) *Operation of Dominion Legislation.*

Our attention was also called to various points in connection with the operation of Dominion legislation, which, it was suggested, required clarification.

The particular points involved were :—

(*a.*) The present practice under which Acts of the Dominion Parliaments are sent each year to London, and it is intimated, through the Secretary of State for Dominion Affairs, that "His Majesty will not be advised to exercise his powers of disallowance" with regard to them.

(*b.*) The reservation of Dominion legislation, in certain circumstances, for the signification of His Majesty's pleasure which is signified on advice tendered by His Majesty's Government in Great Britain.

(*c.*) The difference between the legislative competence of the Parliament at Westminster and of the Dominion Parliaments in that Acts passed by the latter operate, as a general rule, only within the territorial area of the Dominion concerned.

(*d.*) The operation of legislation passed by the Parliament at Westminster in relation to the Dominions. In this connection special attention was called to such Statutes as the Colonial Laws Validity Act. It was suggested that in future uniformity of legislation as between Great Britain and the Dominions could best be secured by the enactment of reciprocal Statutes based upon consultation and agreement.

We gave these matters the best consideration possible in the limited time at our disposal, but came to the conclusion that the issues involved were so complex that there would be grave danger in attempting any immediate pronouncement other than a statement of certain principles which, in our opinion, underlie the whole question of the operation of Dominion legislation. We felt that, for the rest, it would be necessary to obtain expert guidance as a preliminary to further consideration by His Majesty's Governments in Great Britain and the Dominions.

On the questions raised with regard to disallowance and reservation of Dominion legislation, it was explained by the Irish Free State representatives that they desired to elucidate the constitutional practice in relation to Canada, since it is provided by Article 2 of the Articles of Agreement for a Treaty of 1921 that "the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada."

On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, it is recognised that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs. Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

The appropriate procedure with regard to projected legislation in one of the self-governing parts of the Empire which may affect the interests of other self-governing parts is previous consultation between His Majesty's Ministers in the several parts concerned.

On the question raised with regard to the legislative competence of Members of the British Commonwealth of Nations other than Great Britain, and in particular to the desirability of those Members being enabled to legislate with extra-territorial effect, we think that it should similarly be placed on record that the constitutional practice is that legislation by the Parliament at Westminster applying to a Dominion would only be passed with the consent of the Dominion concerned.

As already indicated, however, we are of opinion that there are points arising out of these considerations, and in the application of these general principles, which will require detailed examination, and we accordingly recommend that steps should be taken by Great

Britain and the Dominions to set up a Committee with terms of reference on the following lines :—

"To enquire into, report upon, and make recommendations concerning—

(i.) Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty or authorising the disallowance of such legislation.

(ii.)—(*a.*) The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation.

(*b.*) The practicability and most convenient method of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order and good government of the Dominion.

(iii.) The principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report."

(d.) *Merchant Shipping Legislation.*

Somewhat similar considerations to those set out above governed our attitude towards a similar, though a special, question raised in relation to Merchant Shipping Legislation. On this subject it was pointed out that, while uniformity of administrative practice was desirable, and indeed essential, as regards the Merchant Shipping Legislation of the various parts of the Empire, it was difficult to reconcile the application, in their present form, of certain provisions of the principal Statute relating to Merchant Shipping, viz., the Merchant Shipping Act of 1894, more particularly clauses 735 and 736, with the constitutional status of the several members of the British Commonwealth of Nations.

In this case also we felt that although, in the evolution of the British Empire, certain inequalities had been allowed to remain as regards various questions of maritime affairs, it was essential in dealing with these inequalities to consider the practical aspects of the matter. The difficulties in the way of introducing any immediate alterations in the Merchant Shipping Code (which dealt, amongst other matters, with the registration of British ships all over the world), were fully appreciated and it was felt to be necessary, in any review of the position, to take into account such matters of general concern as the qualifications for registry as a British ship, the status of British ships in war, the work done by His Majesty's Consuls in the interest of British shipping and seamen, and the question of Naval Courts at foreign ports to deal with crimes and offences on British ships abroad.

We came finally to the conclusion that, following a precedent which had been found useful on previous occasions, the general question of Merchant Shipping Legislation had best be remitted to a special Sub-Conference, which could meet most appropriately at the same time as the Expert Committee, to which reference is made above. We thought that this special Sub-Conference should be invited to advise on the following general lines :—

"To consider and report on the principles which should govern, in the general interest, the practice and legislation relating to merchant shipping in the various parts of the Empire, having regard to the change in constitutional status and general relations which has occurred since existing laws were enacted."

We took note that the representatives of India particularly desired that India, in view of the importance of her shipping interests, should be given an opportunity of being represented at the proposed Sub-Conference. We felt that the full representation of

India on an equal footing with Great Britain and the Dominions would not only be welcomed, but could very properly be given, due regard being had to the special constitutional position of India as explained in Section III of this Report.

(e.) *Appeals to the Judicial Committee of the Privy Council.*

Another matter which we discussed, in which a general constitutional principle was raised concerned the conditions governing appeals from judgments in the Dominions to the Judicial Committee of the Privy Council. From these discussions it became clear that it was no part of the policy of His Majesty's Government in Great Britain that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the Empire primarily affected. It was, however, generally recognised that where changes in the existing system were proposed which, while primarily affecting one part, raised issues in which other parts were also concerned, such changes ought only to be carried out after consultation and discussion.

So far as the work of the Committee was concerned, this general understanding expressed all that was required. The question of some immediate change in the present conditions governing appeals from the Irish Free State was not pressed in relation to the present Conference, though it was made clear that the right was reserved to bring up the matter again at the next Imperial Conference for discussion in relation to the facts of this particular case.

V.—RELATIONS WITH FOREIGN COUNTRIES.

From questions specially concerning the relations of the various parts of the British Empire with one another, we naturally turned to those affecting their relations with foreign countries. In the latter sphere, a beginning had been made towards making clear those relations by the Resolution of the Imperial Conference of 1923 on the subject of the negotiation, signature and ratification of treaties. But it seemed desirable to examine the working of that Resolution during the past three years and also to consider whether the principles laid down with regard to Treaties could not be applied with advantage in a wider sphere.

(a.) *Procedure in Relation to Treaties.*

We appointed a special sub-committee under the Chairmanship of the Minister of Justice of Canada (The Honourable E. Lapointe, K.C.) to consider the question of treaty procedure.

The Sub-Committee, on whose report the following paragraphs are based, found that the Resolution of the Conference of 1923 embodied on most points useful rules for the guidance of the Governments. As they became more thoroughly understood and established, they would prove effective in practice.

Some phases of treaty procedure were examined however in greater detail in the light of experience in order to consider to what extent the Resolution of 1923 might with advantage be supplemented.

Negotiation.

It was agreed in 1923 that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments and should take steps to inform Governments likely to be interested of its intention.

This rule should be understood as applying to any negotiations which any Government intends to conduct, so as to leave it to the other Governments to say whether they are likely to be interested.

When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Government receives no adverse comments and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its policy is generally acceptable. It must, however, before taking any steps

which might involve the other Governments in any active obligations, obtain their definite assent.

Where by the nature of the treaty it is desirable that it should be ratified on behalf of all the Governments of the Empire, the initiating Government may assume that a Government which has had full opportunity of indicating its attitude and has made no adverse comments will concur in the ratification of the treaty. In the case of a Government that prefers not to concur in the ratification of a treaty unless it has been signed by a plenipotentiary authorised to act on its behalf, it will advise the appointment of a plenipotentiary so to act.

Form of Treaty.

Some treaties begin with a list of the contracting countries and not with a list of Heads of States. In the case of treaties negotiated under the auspices of the League of Nations, adherence to the wording of the Annex to the Covenant for the purpose of describing the contracting party has led to the use in the preamble of the term "British Empire" with an enumeration of the Dominions and India if parties to the Convention but without any mention of Great Britain and Northern Ireland and the Colonies and Protectorates. These are only included by virtue of their being covered by the term "British Empire." This practice, while suggesting that the Dominions and India are not on a footing of equality with Great Britain as participants in the treaties in question, tends to obscurity and misunderstanding and is generally unsatisfactory.

As a means of overcoming this difficulty it is recommended that all treaties (other than agreements between Governments) whether negotiated under the auspices of the League or not should be made in the name of Heads of States, and if the treaty is signed on behalf of any or all of the Governments of the Empire, the treaty should be made in the name of the King as the symbol of the special relationship between the different parts of the Empire. The British units on behalf of which the treaty is signed should be grouped together in the following order : Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League, Canada, Australia, New Zealand, South Africa, Irish Free State, India. A specimen form of treaty as recommended is attached as an appendix to the Committee's report.

In the case of a treaty applying to only one part of the Empire it should be stated to be made by the King on behalf of that part.

The making of the treaty in the name of the King as the symbol of the special relationship between the different parts of the Empire will render superfluous the inclusion of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which it has been signed in the name of the King. In this connection it must be borne in mind that the question was discussed at the Arms Traffic Conference in 1925, and that the Legal Committee of that Conference laid it down that the principle to which the foregoing sentence gives expression underlies all international conventions.

In the case of some international agreements the Governments of different parts of the Empire may be willing to apply between themselves some of the provisions as an administrative measure. In this case they should state the extent to which and the terms on which such provisions are to apply. Where international agreements are to be applied between different parts of the Empire, the form of a Treaty between Heads of States should be avoided.

Full Powers.

The plenipotentiaries for the various British units should have full powers, issued in each case by the King on the advice of the Government concerned, indicating and corresponding to the part of the Empire for which they are to sign. It will frequently be found convenient, particularly where there are some parts of the Empire on which it is not contemplated that active obligations will be imposed, but where the position of the British subjects belonging to these parts will be affected, for such Government to advise the issue of full powers on their behalf to the plenipotentiary appointed

to act on behalf of the Government or Governments mainly concerned. In other cases provision might be made for accession by other parts of the Empire at a later date.

Signature.

In the cases where the names of countries are appended to the signatures in a treaty, the different parts of the Empire should be designated in the same manner as is proposed in regard to the list of plenipotentiaries in the preamble to the treaty. The signatures of the plenipotentiaries of the various parts of the Empire should be grouped together in the same order as is proposed above.

The signature of a treaty on behalf of a part of the Empire should cover territories for which a mandate has been given to that part of the Empire, unless the contrary is stated at the time of the signature.

Coming into Force of Multilateral Treaties.

In general, treaties contain a ratification clause and a provision that the treaty will come into force on the deposit of a certain number of ratifications. The question has sometimes arisen in connection with treaties negotiated under the auspices of the League whether, for the purpose of making up the number of ratifications necessary to bring the treaty into force, ratifications on behalf of different parts of the Empire which are separate Members of the League should be counted as separate ratifications. In order to avoid any difficulty in future, it is recommended that when it is thought necessary that a treaty should contain a clause of this character, it should take the form of a provision that the treaty should come into force when it has been ratified on behalf of so many separate Members of the League.

We think that some convenient opportunity should be taken of explaining to the other Members of the League the changes which it is desired to make in the form of treaties and the reasons for which they are desired. We would also recommend that the various Governments of the Empire should make it an instruction to their representatives at International Conferences to be held in future that they should use their best endeavours to secure that effect is given to the recommendations contained in the foregoing paragraphs.

(b.) *Representation at International Conferences.*

We also studied, in the light of the Resolution of the Imperial Conference of 1923 to which reference has already been made, the question of the representation of the different parts of the Empire at International Conferences. The conclusions which we reached may be summarized as follows :—

1. No difficulty arises as regards representation at conferences convened by, or under the auspices of, the League of Nations. In the case of such conferences all members of the League are invited, and if they attend are represented separately by separate delegations. Co-operation is ensured by the application of paragraph I.1. (c) of the Treaty Resolution of 1923.

2. As regards international conferences summoned by foreign Governments, no rule of universal application can be laid down, since the nature of the representation must, in part, depend on the form of invitation issued by the convening Government.

(*a.*) In conferences of a technical character, it is usual and always desirable that the different parts of the Empire should (if they wish to participate) be represented separately by separate delegations, and where necessary efforts should be made to secure invitations which will render such representation possible.

(*b.*) Conferences of a political character called by a foreign Government must be considered on the special circumstances of each individual case.

It is for each part of the Empire to decide whether its particular interests are so involved, especially having regard to the active obligations likely to be imposed by any resulting treaty, that it desires to be represented at the Conference, or whether it is content

to leave the negotiation in the hands of the part or parts of the Empire more directly concerned and to accept the result.

If a Government desires to participate in the conclusion of a treaty, the method by which representation will be secured is a matter to be arranged with the other Governments of the Empire in the light of the invitation which has been received.

Where more than one part of the Empire desires to be represented, three methods of representation are possible :—

(i.) By means of a common plenipotentiary or plenipotentiaries, the issue of full powers to whom should be on the advice of all parts of the Empire participating.

(ii.) By a single British Empire delegation composed of separate representatives of such parts of the Empire as are participating in the conference. This was the form of representation employed at the Washington Disarmament Conference of 1921.

(iii.) By separate delegations representing each part of the Empire participating in the conference. If, as a result of consultation, this third method is desired, an effort must be made to ensure that the form of invitation from the convening Government will make this method of representation possible.

Certain non-technical treaties should, from their nature, be concluded in a form which will render them binding upon all parts of the Empire, and for this purpose should be ratified with the concurrence of all the Governments. It is for each Government to decide to what extent its concurrence in the ratification will be facilitated by its participation in the conclusion of the treaty, as, for instance, by the appointment of a common plenipotentiary. Any question as to whether the nature of the treaty is such that its ratification should be concurred in by all parts of the Empire is a matter for discussion and agreement between the Governments.

(c.) *General Conduct of Foreign Policy.*

We went on to examine the possibility of applying the principles underlying the Treaty Resolution of the 1923 Conference to matters arising in the conduct of foreign affairs generally. It was frankly recognised that in this sphere, as in the sphere of defence, the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain. Nevertheless, practically all the Dominions are engaged to some extent, and some to a considerable extent, in the conduct of foreign relations, particularly those with foreign countries on their borders. A particular instance of this is the growing work in connection with the relations between Canada and the United States of America which has led to the necessity for the appointment of a Minister Plenipotentiary to represent the Canadian Government in Washington. We felt that the governing consideration underlying all discussions of this problem must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments. In the light of this governing consideration, the Committee agreed that the general principle expressed in relation to Treaty negotiations in Section V (a) of this Report, which is indeed already to a large extent in force, might usefully be adopted as a guide by the Governments concerned in future in all negotiations affecting foreign relations falling within their respective spheres.

(d.) *Issue of Exequaturs to Foreign Consuls in the Dominions.*

A question was raised with regard to the practice regarding the issue of exequaturs to Consuls in the Dominions. The general practice hitherto, in the case of all appointments of Consuls de Carrière in any part of the British Empire, has been that the foreign Government concerned notifies His Majesty's Government in Great Britain, through the diplomatic channel, of the proposed appointment and that, provided that it is clear that the person concerned is, in fact, a Consul de Carrière, steps have been taken, without further formality, for the issue of His Majesty's exequatur. In the

case of Consuls other than those de Carrière, it has been customary for some time past to consult the Dominion Government concerned before the issue of the exequatur.

The Secretary of State for Foreign Affairs informed us that His Majesty's Government in Great Britain accepted the suggestion that in future any application by a foreign Government for the issue of an exequatur to any person who was to act as Consul in a Dominion should be referred to the Dominion Government concerned for consideration and that, if the Dominion Government agreed to the issue of the exequatur, it would be sent to them for counter-signature by a Dominion Minister. Instructions to this effect had indeed already been given.

(e.) *Channel of Communication between Dominion Governments and Foreign Governments.*

We took note of a development of special interest which had occurred since the Imperial Conference last met, viz., the appointment of a Minister Plenipotentiary to represent the interests of the Irish Free State in Washington, which was now about to be followed by the appointment of a diplomatic representative of Canada. We felt that most fruitful results could be anticipated from the co-operation of His Majesty's representatives in the United States of America, already initiated, and now further to be developed. In cases other than those where Dominion Ministers were accredited to the Heads of Foreign States, it was agreed to be very desirable that the existing diplomatic channels should continue to be used, as between the Dominion Governments and foreign Governments, in matters of general and political concern.

VI.—SYSTEM OF COMMUNICATION AND CONSULTATION.

Sessions of the Imperial Conference at which the Prime Ministers of Great Britain and of the Dominions are all able to be present cannot, from the nature of things, take place very frequently. The system of communication and consultation between Conferences becomes therefore of special importance. We reviewed the position now reached in this respect with special reference to the desirability of arranging that closer personal touch should be established between Great Britain and the Dominions, and the Dominions *inter se*. Such contact alone can convey an impression of the atmosphere in which official correspondence is conducted. Development, in this respect, seems particularly necessary in relation to matters of major importance in foreign affairs where expedition is often essential, and urgent decision necessary. A special aspect of the question of consultation which we considered was that concerning the representation of Great Britain in the Dominions. By reason of his constitutional position, as explained in section IV (b) of this Report, the Governor-General is no longer the representative of His Majesty's Government in Great Britain. There is no one therefore in the Dominion capitals in a position to represent with authority the views of His Majesty's Government in Great Britain.

We summed up our conclusions in the following Resolution which is submitted for the consideration of the Conference :—

> "The Governments represented at the Imperial Conference are impressed with the desirability of developing a system of personal contact, both in London and in the Dominion capitals, to supplement the present system of inter-communication and the reciprocal supply of information on affairs requiring joint consideration. The manner in which any new system is to be worked out is a matter for consideration and settlement between His Majesty's Governments in Great Britain and the Dominions, with due regard to the circumstances of each particular part of the Empire, it being understood that any new arrangements should be supplementary to, and not in replacement of, the system of direct communication from Government to Government and the special arrangements which have been in force since 1918 for communications between Prime Ministers."

VII.—PARTICULAR ASPECTS OF FOREIGN RELATIONS DISCUSSED BY COMMITTEE.

It was found convenient that certain aspects of foreign relations on matters outstanding at the time of the Conference should be referred to us, since they could be considered in greater detail, and more informally, than at meetings of the full Conference.

(a.) *Compulsory Arbitration in International Disputes.*

One question which we studied was that of arbitration in international disputes, with special reference to the question of acceptance of Article 36 of the Statute of the Permanent Court of International Justice, providing for the compulsory submission of certain classes of cases to the Court. On this matter we decided to submit no Resolution to the Conference, but, whilst the members of the Committee were unanimous in favouring the widest possible extension of the method of arbitration for the settlement of international disputes, the feeling was that it was at present premature to accept the obligations under the Article in question. A general understanding was reached that none of the Governments represented at the Imperial Conference would take any action in the direction of the acceptance of the compulsory jurisdiction of the Permanent Court, without bringing up the matter for further discussion.

(b.) *Adherence of the United States of America to the Protocol establishing the Permanent Court of International Justice.*

Connected with the question last mentioned, was that of adherence of the United States of America to the Protocol establishing the Permanent Court of International Justice.

The special conditions upon which the United States desired to become a party to the Protocol had been discussed at a special Conference held in Geneva in September, 1926, to which all the Governments represented at the Imperial Conference had sent representatives. We ascertained that each of these Governments was in accord with the conclusions reached by the special Conference and with the action which that Conference recommended.

(c.) *The Policy of Locarno.*

The Imperial Conference was fortunate in meeting at a time just after the ratifications of the Locarno Treaty of Mutual Guarantee had been exchanged on the entry of Germany into the League of Nations. It was therefore possible to envisage the results which the Locarno Policy had achieved already, and to forecast to some extent the further results which it was hoped to secure. These were explained and discussed. It then became clear that, from the standpoint of all the Dominions and of India, there was complete approval of the manner in which the negotiations had been conducted and brought to so successful a conclusion.

Our final and unanimous conclusion was to recommend to the Conference the adoption of the following Resolution :—

> "The Conference has heard with satisfaction the statement of the Secretary of State for Foreign Affairs with regard to the efforts made to ensure peace in Europe, culminating in the agreements of Locarno ; and congratulates His Majesty's Government in Great Britain on its share in this successful contribution towards the promotion of the peace of the world."

Signed on behalf of the Committee,
BALFOUR, *Chairman.*

2, *Whitehall Gardens, S.W.* 1,
November 18, 1926.

APPENDIX.

(See Section V (*a*).)

SPECIMEN FORM OF TREATY.

The President of the United States of America, His Majesty the King of the Belgians, His Majesty the King [*here insert His Majesty's full title*], His Majesty the King of Bulgaria, &c., &c.

.....

Desiring.....

Have resolved to conclude a treaty for that purpose and to that end have appointed as their Plenipotentiaries:

The President .....

.....

His Majesty the King [*title as above*]:

for Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League (of Nations),
AB.

for the Dominion of Canada,
CD.

for the Commonwealth of Australia,
EF.

for the Dominion of New Zealand,
GH.

for the Union of South Africa,
IJ.

for the Irish Free State,
KL.

for India,
MN

.....

who, having communicated their full powers, found in good and due form, have agreed as follows:

.....

.....

In faith whereof the above-named Plenipotentiaries have signed the present Treaty.

AB.....
CD.....
EF.....
GH.....
IJ.....
KL.....
MN.....

(or if the territory for which each Plenipotentiary signs is to be specified:

(for Great Britain, &c.).....*AB.*
(for Canada).....*CD.*
(for Australia).....*EF.*
(for New Zealand).....*GH.*
(for South Africa).....*IJ.*
(for the Irish Free State).....*KL.*
(for India).....*MN.*)

Printed for the Imperial Conference. November 1926.

MOST SECRET. **Copy No.** 6

E. (I.R.—26). 1st Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MINUTES OF THE FIRST MEETING OF THE COMMITTEE, HELD IN THE CABINET ROOM, FOREIGN OFFICE, S.W. 1, ON WEDNESDAY, OCTOBER 27, 1926, AT 3 P.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. Sir AUSTEN CHAMBERLAIN, K.G., M.P., Secretary of State for Foreign Affairs.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and the Colonies.

The Right Hon. Sir DOUGLAS HOGG, K.C., M.P., Attorney-General.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

The Hon. N. C. HAVENGA, Minister of Finance.

Newfoundland.

The Hon. A. B. MORINE, K.C., Minister without Portfolio.

Canada.

The Right Hon. W. L. MACKENZIE C.M.G., Prime Minister.

The Hon. E. LAPOINTE, K.C., Minister of Justice.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

The Right Hon. Sir FRANCIS BELL, G.C.M.G., K.C., Minister without Portfolio.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

Mr. DESMOND FITZGERALD, T.D., Minister for External Affairs.

Mr. P. McGILLIGAN, T.D., Minister for Industry and Commerce.

India.

The Right Hon. the EARL OF BIRKENHEAD, Secretary of State for India.

The MAHARAJA OF BURDWAN, G.C.I.E., K.C.S.I., I.O.M.

Mr. D. T. CHADWICK, C.S.I., C.I.E., Secretary to the Government of India, Commerce Department.

The following were also present:

Great Britain.

Mr. J. C. C. DAVIDSON, C.H., C.B., M.P., Parliamentary and Financial Secretary to the Admiralty.

Sir WILLIAM TYRRELL, G.C.M.G., K.C.V.O., C.B., Permanent Under-Secretary of State for Foreign Affairs.

Mr. H. F. BATTERBEE, C.M.G., C.V.O., Assistant Secretary, Dominions Office.

Commonwealth of Australia.

Mr. R. G. CASEY, D.S.O., M.C., Political Liaison Officer in London.

Union of South Africa.

N. SMIT, High Commissioner.

N EYN, Private Secretary to the nister.

Canada.

Dr. O. D. SKELTON, Deputy Minister for External Affairs.

New Zealand.

Mr. F. D. THOMSON, C.M.G., Secretary to the Delegation.

Irish Free State.

Mr. J. COSTELLO, K.C., Attorney-General.

Mr. J. P. WALSHE, Secretary of the Department of External Affairs.

P. A. HANKEY, G.C.B., *Secretary to the Committee.*
Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee.*

Mr. F. E. F. ADAM (Foreign Office)
Mr. C. W. DIXON, O.B.E. (Dominions Office)
Mr. JEAN DÉSY (Canadian Delegation)
} *Joint Assistant Secretaries to the Committee.*

AFTER a brief preliminary discussion concerning procedure and publicity, LORD BALFOUR read the following statement:—

"Since the shock of the Great War has, for good or for evil, hastened so many movements which were, in any case, inevitable, it is no matter for surprise that men ask themselves how the structure of the constitution of the British Empire has fared in this changing world. Before 1914 it seemed to alien observers the frailest of political structures. A State which (so far as its western elements were concerned) consisted in the main of six self-governing communities, bound together by no central authority, not competent to enlist a single recruit or impose a shilling of taxation, might look well painted on the map, but as fighting machine is surely negligible.

"The war refuted this plausible conjecture; but it left the Empire unexplained and undefined. Then came the Peace; and the constituent States took their full share in framing and signing the Treaty which they had done so much to secure. But this procedure, though it demonstrated the effective reality of the British Empire, did little to make its position clear to students of comparative politics.

"(ii.)

"The difficulty which so many find in 'placing' the British Empire arises largely from the fact that its character and constitution are entirely without precedent, and that, as a result, it does not comfortably fit into any familiar theories, nor can it be described by the ordinary concepts of international law. Yet its general character is not difficult to delineate.

"(iii.)

"It may be conveniently divided into elements of four different kinds:—

"(1.) The seven self-governing communities—Great Britain and the North of Ireland, Canada, Australia, New Zealand, South Africa, the Irish Free State and Newfoundland.

" (2.) India.
" (3.) The Dependencies of the self-governing State, namely, the Colonies, the Protectorates, and the Mandated Territories of Great Britain, Australia, New Zealand and the Union of South Africa.

" (iv.)

" In what consists the unity of this varied assortment of communities, scattered over the whole globe, and differing from each other in language, race, religion and history?

" From a strictly juridical point of view, there are only two attributes which they all share with each other and with nobody else. They are all under one Crown; and their inhabitants are all citizens of one Empire. But juridical formulas, if they stand alone, are but a brittle bond. On what solid foundation of patriotic sentiment does the fabric of the Empire rest? It rests upon the well-founded conviction that the Empire makes for general peace, and for the security of its diverse portions. Whether in war or in peace, there is no constituent of the Empire which does not gain in consideration and status by being part of a greater whole; and what is gain to them is far from being any loss to others. For the very existence of this complex unity makes for the maintenance of world peace, and on the maintenance of world peace depends the future of civilisation.

" (v.)

" It is true, no doubt, that, while in our knowledge of present needs and in our hopes of future security we may all of us find adequate ground for Imperial patriotism, the different parts of this varied whole cannot draw their strength from memories of a common history. Their history has been too diverse; their ancient differences have been too acute. Yet Imperial unity gives us all the right to a share in the glories of each other's past, and to claim an interest in each other's contributions to the wealth of the world in the spheres of literature, science, politics and war. I at least, as a Scotsman, am not going to surrender my share of Magna Charta and Shakespeare on account of Bannockburn and Flodden. This may seem fanciful: but I hope it is as real to others as it is to me.

" (vi.)

" These general reflections are a necessary prelude to the more particular business of the Committee of Prime Ministers; and I turn to the problems raised by the most novel and yet most characteristic peculiarity of the British Empire—I mean the co-existence within its unity of seven autonomous communities. This statement of fact, though very simple, is barely intelligible to foreigners, and no doubt has among ourselves given rise to some secondary difficulties. It is with these secondary difficulties that the Committee has to deal; but in dealing with them it is vital to remember that they *are* secondary, and that the fundamental truth to which they are subordinate is the equality of status which is the essential foundation of this part of our imperial fabric.

" (vii.)

" It is undoubtedly true that this equality of status is combined at present, and probably will always be combined in some form or other, with differences of function. For example, four out of the seven self-governing communities—Great Britain, Australia, New Zealand and South Africa—have Dependencies belonging to the Empire. Canada, the Irish Free State and Newfoundland have not. Great Britain has special relations with India, the Colonies, the Protectorates and the Channel Islands not directly shared by the Dominions. She also takes a leading part in the all-important and most burdensome task of Imperial Defence and in the direction of Foreign Affairs which has no exact parallel elsewhere.

" (viii.)

" Her relations with these two great departments of Imperial activity are no doubt due in part to historic reasons. But there is a more fundamental explanation arising out of the actual conditions with which, as practical statesmen, we have all got to deal. The principles determining the general direction

of Foreign Affairs may be, and ought to be, the product of consultation; and it will be among our chief duties to make that consultation more continuous and more effective. But there are always moments in the conduct of fleets, of armies, and of negotiations, when decisions, if they are to be of use, must be rapid, and when consultations, if they involve delay, are a danger rather than a strength. If this be so, it must be on one of the seven self-governing communities that the greatest weight of responsibility must be thrown; and so long as the centre of difficulty is Europe, and the present distribution of population in the Empire suffers no overwhelming change, it seems impossible to ask any other portion of the Empire to perform the major duties which now devolve upon Great Britain. We must content ourselves with improving to the utmost the machinery of imperial consultation, which, in any case, will work more rapidly and smoothly as the progress of invention enables us to overcome more effectually the obstacles presented by Time and Space."

MR. MACKENZIE KING said that Lord Balfour had very fairly stated the position. The situation did not raise any question for the present, but questions might arise as to how far the practice is consistent with the principle stated. For example, the question might be raised whether the distinction should not be made between the Government and the King and whether the Governor-General should be considered as the Representative of the King and not as the representative of the Government in London.

MR. AMERY said that this might be a subject for discussion. Traces of a former constitutional régime remain, but in practice have no effect. How far these old forms are still an obstacle to recognition of full equality is a matter for discussion.

GENERAL HERTZOG then read the following statement:—

"1. *Importance of Dominion Relations in the Empire being known both to the Empire Communities Themselves and to the World at Large.*

"In discussing the constitutional relations of the associated members of the Empire, as I intend doing, and the necessity of those relations being made known publicly and authoritatively to the communities of the Dominions themselves and to the world at large, I wish it to be clearly understood that I am speaking as representing South Africa and with a view to South African interests and requirements in the first place. If those interests and requirements are not the interests and requirements of this or that Dominion, I can only apologise to their representatives at this Conference if I take up time upon matters in which they may not feel themselves equally concerned. I can quite understand that in matters of this kind national feeling and national requirements must vary and decide, and that therefore what may be felt as an imperative necessity in the one case, may be considered as quite immaterial, if not harmful, in the other.

"It is for that reason that within the Empire we have every grade of freedom and autonomy; and that even amongst the Dominions themselves, the exercise of their autonomous rights is availed of in different degrees, according to the dictates of circumstances and interests.

"It would, therefore, indeed be monstrous, and certainly disastrous, if the freedom of the one Dominion, or its exercise of the rights pertaining to that freedom, were made dependent upon the will of, or upon the exercise of similar rights by, the other. The Dominions are each and all free and equal in status, but no one has the right to claim, and I hope no one will claim, that the exercise of the rights and privileges inherent in that freedom and equal status, shall be standardised for all with mechanical monotony. That would be the death of organic development within the Empire, a stagnation leading to decay.

"With these few introductory remarks, I now wish to make it clear to this Conference, why I hold it imperatively necessary, that the relations between the various member States of the Commonwealth shall no longer remain uncertain with the Dominion Communities, nor with the world at large; but that the time has come for an open declaration of the relations in which these States stand to one another, of their independent equal status within the Empire and the sameness in character of that independence with all.

"Fortunately, as far as Great Britain and the British Government are concerned, there is no longer any question as to the character or degree and extent of Dominion independence. Ever since 1921 the British Government have at Imperial Conferences and upon other occasions assured the Dominions,

and the Dominions have accepted, that they are ' independent States,' ' equal in status as nations ' and separately ' entitled to international recognition as independent States,' ' absolutely independent of each other as Governments,' ' accepted into the Comity of nations, united by the common bond of allegiance to the Crown, and freely associated with Great Britain as members of the British Empire.

" All this has already been conceded, and is to-day conceded, by the British Government. There can, therefore, no longer be any doubt that as between us as members of the Empire, we are fully agreed, as Governments, as to what our relations are, both as members of the Empire and as over against other nations and States outside the Empire. We stand each and all, including Great Britain, on an equal footing of independence, domestically and internationally. From other nations we differ only in this, that we all belong, as free nations, to the close circle of members of the British Empire, whose relationship to that Empire has, even by the League of Nations, and therefore internationally been recognised, as something to be respected by it at all times.

" The relations between us as members of the British Empire, are either what has been indicated by me, or they are not. If they are not, then I submit that it is our duty to have all uncertainty immediately removed, and that it be made abundantly clear just where the Dominions stand as over against Great Britain, and what their rightful place is within the Empire. If their independence with Great Britain be not of an equal character, the Dominions should know, as I think they have a right to know, where, in what, and to what extent, their independence or freedom is of a lesser or different character.

" If, on the other hand, that independence is what I have maintained it to be, equal in character and extent with that of Great Britain, then there should be no reason why it should not be made public, and proclaimed in such a manner that not only we sitting at this table, but also our respective peoples and the world at large, shall have full knowledge of our relationship to one another.

" We are not a secret society; and the interests of the Empire demand that we shall not give either our own peoples or the world the impression that there is something which we seek to hide or which we fear to have revealed in our position and relationship.

" You will excuse me if I reject the idea that such openness and certainty is calculated to destroy the Empire. Secrecy and suspicion will do that. Open frankness rooted in the feeling of freedom and certainty, creates trust and confidence, without which unity in purpose and action cannot be either secured or insured.

" 2. *Necessity of Dominion Status being Openly Proclaimed to Dominion Communities.*

" Allow me now to point out to the Conference how essential it is to the Dominion Communities themselves that they should not be kept in darkness or uncertainty as to Empire Constitutional relations. Perhaps I cannot here do better than quote from General Smuts's memorandum on ' The Constitution of the British Commonwealth,' a document submitted by him during the Imperial Conference of 1921 to members of that Conference, including the present Secretary for Dominion Affairs :—

> " ' Delay,' he says, ' in the settlement of Dominion status is fraught with grave dangers. The British Commonwealth cannot escape the atmosphere of political unsettlement and change which is affecting most other countries. The national temperature of all young countries has been raised by the event of the Great War. The national sense, the consciousness of nationhood of the Dominions has received a great impetus from their share in the Great War and from the experience of hundreds of thousands of Dominion troops in the campaigns of the Great War. While these experiences have strengthened the common bonds, they have undoubtedly also deepened the Dominion sense of national separateness, of the Dominions *as distinct nations in the Commonwealth and the world.* And with this sense goes a feeling of legitimate pride and self-respect which affect the rank and file of these young nations just as much as their political leaders. *Unless* Dominion status is settled soon in a way which will satisfy the legitimate aspirations of these young nations, *we must look for separatist movements in the Commonwealth.* Such movements already exist, notably in South Africa, but potentially in several

of the other Dominions also. *And the only way* to deal with such movements is not to wait until they have become fully developed, and perhaps irresistible in their impetus, but to forestall them and make them unnecessary by the most generous satisfaction of the Dominion sense of nationhood and statehood. The warning against always being too late in coming to a proper settlement, which the example of Ireland gives to the whole Commonwealth, is one which we can only neglect at our peril.'

" What was said by General Smuts in 1921 as to the urgency of a settlement of Dominion status, was then felt by him as holding equally with respect to the publication of that settlement.

" Speaking on constitutional relations at the Imperial Conference of 1921 General Smuts said *inter alia*:—

> " ' This movement in favour of greater national liberty and freedom is a world movement, and the British Empire will feel it too; and the more we can make it clear to the component parts of the Empire and to the world that ours is not a system of subordination, that this is not a system of one dominant Power of Government which keeps the others in a subordinate position, but that it is a system of equal States working together on principles of equality and freedom, the more we will, to my mind, stabilise the position in the British Empire and the greater power for good we shall be.'

" It is to be regretted deeply, to my mind, that General Smuts's advice was not given effect to, and a constitutional declaration made such as he then and there suggested.

" Since that time the settlement, as I have pointed out, has been come to; but unfortunately the publication of that settlement for the information of the Dominion peoples, as was contemplated by General Smuts, has not been given effect to, except in a vague and often half-hearted manner, which has been fruitful of more doubt and suspicion than of knowledge and certainty. The result is that bitter wrangling over the question of our status is daily taking place, indicative of the grossest ignorance, even in the highest ranks of Parliament, the press and society; and incitive to feelings of party and race animosity which inevitably must, and do, lead to a feeling of dissatisfaction with Empire relations and Empire; so that, using the words of General Smuts —merely changing the word *settlement* into *publication*—it can be truly said to-day as he did in 1921, *that delay in the publication of Dominion status is fraught with grave dangers*—to the well-being of South Africa no less than to the Empire.

" The vague and half-hearted attempts at informing the people of South Africa of our conceded status, combined with General Smuts's own expressed disappointment at what he considered an ignoring of our status in connection with the Washington Conference, has occasioned so much doubt, suspicion and scepticism, that, unless that is removed by an authoritative statement of our true status that confidence and belief to which I referred on a former occasion at this Conference, as necessary for the continued existence of the will to live in the Empire, cannot be expected to be what it should.

" I shall not do my duty if I did not accentuate this. The cause of that unwillingness will, in that event, be not hostility to the Empire as such, but national disappointment, the suspicion of being insincerely dealt with, and resentment at being sneered and gibed at by men to whom South Africa does not mean what it means to the old Dutch or Huguenot settler, and who therefore cannot sympathise with him in that passionate love for a South African freedom, which he is often offensively told not to possess, while deeply longing for a sympathetic assurance.

" The Dutch-speaking section of the South African people, to whom I am chiefly alluding here, are deeply anxious to have that assurance, not because of any motive hostile to the welfare of the Empire, but because of their intense and passionate love for national freedom, and because of the proud conviction that they deserve the possession and enjoyment of such freedom no less than any other section of the community, or of the Empire.

" 3. *Necessity of Dominion Status being authoritatively declared to the World.*

" I shall now turn to the necessity of having our Dominion status authoritatively declared to the world.

"But here, again, allow me to refer to General Smuts in his memorandum already referred to. Speaking of the Constitutional position of the Dominions in regard to Executive Sovereignty in the Dominions, he says *inter alia*:—

> "'. . . . there is a good deal of obscurity about the whole position, not only in the United Kingdom and the Dominions but also in foreign countries. Foreigners find it difficult to understand the unwritten British Constitution, in which precedents mould and expand the Constitution, and the legal aspect is nothing and the constitutional aspect everything. Even in America the Senate debates over the reservations in regard to the voting power of the British Empire in the Assembly of the League of Nations are a warning to us. Other people find it difficult to grasp the difference between legal theory and constitutional practice in the Empire and to see how the law of the Constitution is moulded and finally abrogated by the practice of the Constitution, and how, without a change of the law, a British Colony becomes in constitutional fact an independent State.
>
> "'*These abstruse matters might be cleared up in some formal way which would show the true nature of the Dominion status as distinct from legal archaisms.* It has been suggested by Mr. Duncan Hall, in his interesting book on the British Commonwealth of Nations, that a declaration of constitutional rights should be made which would explain the new developments in the Dominion status, remove obscurities, set at rest doubts and abrogate what is obsolete—a declaration, in fact, which would become a precedent and a most important amendment of the unwritten law of the Constitution.'
>
> "'. . . . I heartily endorse Hall's suggestion, which seems to me the easiest constitutional means of settling the international status of the Dominions, without changing the unwritten flexible character of the constitution of the British Commonwealth.'

"The obscurity with foreigners of which General Smuts speaks is admitted in almost every Foreign Office paper referring to Dominion relations in connection with foreign affairs, and publicists constantly comment upon it, while as a consequence of that obscurity they draw inferences and come to conclusions which are not merely inconsistent with the accepted Status of the Dominions, and offend 'the feeling of legitimate pride and self-respect which affects'—as General Smuts says—'the rank and file of those young Nations just as much as their political leaders,' but which also are prejudicial to Dominion interests and to the exercise of Dominion rights.

"Foreign States and Governments can take no official note of Dominion freedom except in so far as it has been officially intimated to them by Great Britain. Only in so far as that has been done can the Dominions obtain international recognition; and Dominion feeling and sentiment, as far as South Africa is concerned, will obtain no adequate satisfaction unless that recognition corresponds with the measure of independence which is possessed. Anything short of that recognition must be felt, and is felt, to that extent as a denial of independence and freedom of action, and, therefore, as a denial of equality of status in the Empire, no matter how much between ourselves we may assert that independence or that equality.

"Mr. Bruce is reported as having said a few days ago ('Weekly Despatch,' the 24th October, 1926): 'We must establish the great principle that all self-governing Dominions are free and independent entities whose destinies rest entirely in their own hands inside the British Empire.' As long as the British Empire is not conceived of as some super-State or super-authority, with the right of imposing its will upon any, or of dragooning or coercing any, of the associated member States to action or inaction, I have no fault to find with this declaration and heartily welcome it. But what I hold to be imperative, if the Empire is to remain strong and healthy, and what I wish to urge most seriously, is that the equal freedom and independence of all its members shall be authoritatively declared to the world.

"Freedom of will, *i.e.*, consent, is the great rock of Empire, on which its foundations were laid in the past and upon which it must stand or fall in the future. That bond of Empire, the free will of the people of every member State, must be brought home to the Dominion communities no less than to foreign Governments, and that can be done adequately only by a declaration to that effect.

"If that is done, the necessary confidence will be established with all sections of our South African people in a manner that will obtain for the Empire a measure of support and co-operation not hitherto known; and, as far as foreign nations are concerned, they will know and feel that where the associated members of the Empire speak or act altogether, they speak and act with the united heart and will of so many free peoples.

"4. *Object of Declaration not a Written Constitution.*

"The object of such a declaration is not to have a Dominion Constitution laid down, specifying the rights and liberties of the Dominions. The Dominions standing, as they do, on a footing of equal freedom and independence with Great Britain, it would be as superfluous and absurd to lay down what that freedom and independence is as it would be to define or circumscribe the freedom or independence of Great Britain.

"I repeat it, that what is wanted, and, as far as South Africa is concerned, urgently wanted, is that that independence shall not only be known to and believed in by us sitting round this Conference table, but equally so by those whose representatives we are and upon whose will the existence of the Empire depends, and necessarily must depend; as also by the nations of the world, with the greater part of whom, through the League of Nations, the Dominions already stand internationally in contact, and all of whom have a right to demand that our position shall be communicated to them, if that position is to be of any importance to them, or to us, internationally.

"Not until that is so made known shall our equal status cease to be a matter of obscurity and sceptical doubt at home and abroad, compelling us, as General Smuts once so bitterly complained, to enter by the back door to the Council chamber of assembled nations, or excluding the Dominions from that chamber when it suits the purpose of interested nations.

"5. *Nor to Compete with Great Britain in the Field of Foreign Diplomatic Services.*

"Nor is such a declaration desired for the purpose of competing with Great Britain in the field of diplomacy. South Africa certainly has no intention of availing herself indiscriminately of her rights in that respect, and so to take out of the hands of Great Britain the many and great international services now so willingly and efficiently performed by the latter on behalf of the Dominions. That would be the height of folly. But she does feel that where her interests require that any such service shall be performed by agents of her own, the right to do so shall not be obstructed by the interests of any other country or through the want of proper intimation of her national status.

"6. *Declaration Necessary for Adequate Empire Co-operation.*

"One word as to Empire co-operation, upon which all the usefulness of the Commonwealth as between its members, as well as the influence which it is to exercise upon the world and world affairs, must depend.

"To that co-operation the goodwill of the Dominions is essential, and, as I have tried to point out, that goodwill cannot be effectively secured except through an authoritative declaration of their constitutional position in the Empire.

"It must, moreover, be pointed out that the absence of such a declaration cannot but hamper and restrict Empire co-operation even where the greatest goodwill exists. In order that those to whom are at any time entrusted the destinies of a Dominion may decide upon such co-operation, it is necessary that they should know to what extent their country's freedom will be committed through their decision. Not only that; they will also have to show to those on whose behalf they exercise that trust that the freedom of the Dominion is not prejudicially affected by that co-operation.

"This it will not be possible to do satisfactorily in matters of important national concern, unless the people of the Dominion equally with their responsible Ministers are fully informed of their national status, and can clearly see how that status may or will be affected by such co-operation.

"If it is true, as I see it complained of, that Dominion Statesmen at a Conference like this sometimes hardly pass beyond mutual courtesies, it is no doubt often due to the hesitancy induced by ignorance of what they will commit

their country to if they consent to a line of policy suggested without the necessary assurance as to what the status of their country is, and how that status may be affected by that policy.

"7. *Conclusion.*

"Taking all this into consideration, and knowing what the feeling in South Africa is, and how much that feeling will be beneficially influenced by a declaration as urged by me, I do wish to impress upon the British Government the necessity of such a declaration being issued.

"I have already quoted what General Smuts said in 1921 as to the necessity of such a declaration and how he then warned against *being too late*. Much ill-feeling and unpleasantness would have been avoided if effect had been given to his advice at the time.

"Yet it is not too late; and I implore that what should have been done in 1921, shall now no longer be delayed."

MR. AMERY then said that General Smuts's memorandum was one which he had drafted before he came to the Conference of 1921, and they had discussed it together as friends. He added that the matter was not then pressed because the proposal for a constitutional conference, at which both Governments and Oppositions would be represented, to discuss the whole question, was abandoned; General Smuts realised that a resolution of that kind could not usefully come from a conference of Prime Ministers.

Two questions were raised: that of a general declaration of rights as a basis which would be followed by constitutional development in the usual course; and the question whether the authority of the Imperial Conference was sufficient to reach a decision on that declaration.

In any such declaration it would be necessary to define the sense in which each part of the Empire is independent, while all are inter-dependent in virtue of a common Crown, a common nationality and a common responsibility. It would therefore require most careful preparation and consideration by some body of unprecedented character with a wider authority than the Imperial Conference.

There had been considerable advance since 1921, but the practical aspects of the question might perhaps be examined by legal experts.

SIR AUSTEN CHAMBERLAIN'S recollection, which he thought Lord Birkenhead could confirm, was that General Smuts withdrew his proposal not merely because of the abandonment of the constitutional conference but also as a result of private discussions which showed the danger of rendering rigid inter-Imperial relations. The Empire's existence depended on the elasticity of its Constitution. Definition would impair its growth; and it was this danger which led the Conference of 1921 not to attempt any such definition of our relations.

MR. BRUCE thought that such a declaration would merely state what is really a matter of common agreement, even if not generally understood abroad.

GENERAL HERTZOG considered that his country ought to know where it stood to-day; the uncertainty of the position led to ill-feeling and suspicion. Equal status requires some definition; they stood in every respect on the same footing with Great Britain as regards their rights, but they did not in practice exercise all those rights. The Empire consists of a number of free States all standing in the same relation under the Crown. If there is any appearance of subordination or inferiority, it is no more than an appearance.

LORD BALFOUR thought that he had stated this in the most explicit form in which it could be stated in his opening memorandum. He would deprecate going into exact *nuances* of independence either in that room, or on a public platform or anywhere else; was it not enough to know that in the view of every British statesman whatever rights Great Britain has the Dominions have; and the same applies to status. He had said as much quite recently in the House of Lords, and indeed for the last twenty years. It is only on practical grounds that the leading part in the burden and cost of defence and the conduct of foreign affairs falls on one of the seven Governments.

MR. HAVENGA said that the British Government had never stated this to foreign Governments.

LORD BALFOUR replied that it had been stated as a commonplace.

SIR AUSTEN CHAMBERLAIN stated that no one in this country would dispute that each self-governing Dominion is as independent as Great Britain; the only qualification is that Great Britain is not independent of the Dominions. It was not easy to explain the theory of this to foreigners, as he had experienced at Geneva in connection with the Protocol; though they recognised in practice that at Locarno he could only sign for the Government in London.

MR. AMERY remarked that a definition which would satisfy us would not satisfy foreigners. We could only proceed step by step and deal with specific points as they arise.

LORD BIRKENHEAD said that he had listened with great attention to General Hertzog's observations and that nothing in them had caused him anxiety. There was, indeed, nothing new, as Lord Balfour had pointed out some twenty years ago, in this independence of Dominions. In South Africa, as in the Irish Free State, sad memories were stored up. He saw nothing in the statement made by General Hertzog at the first meeting of the Conference to justify the criticism it had receive in South Africa. In days of peril every part of the Empire had contributed its effort. He suggested that General Hertzog might put his ideas into a form which would satisfy him and which could be discussed. If, after discussion, agreement were reached in the Committee, the further question could be considered whether publication were desirable.

Sentiment might be as important as practical inconvenience; but such matters cannot be dealt with *in abstracto*.

LORD BIRKENHEAD alluded to the concluding portion of General Hertzog's first statement, which contained the true view that certain functions were entrusted by the Empire to the Government in London as mandatory. Some day another Government might be invested with these functions. He was not speaking on behalf of India, but as a Cabinet Minister present at the meeting.

MR. BRUCE agreed with the suggestion that General Hertzog should submit a formula. There was nothing to which he could take exception in General Hertzog's statement. The resolution of 1923 in relation to treaties had a more far-reaching importance.

GENERAL HERTZOG offered to lay a formula before the Committee.

LORD BALFOUR mentioned the necessity of considering at the same time the memorandum on the form of preamble and signature of treaties (E. 104), which deals with the practical application of the principle of equal status

SIR AUSTEN CHAMBERLAIN thought that the major issue raised by General Hertzog should be settled before the details.

MR. O'HIGGINS then spoke on the general question of Dominion status. He compared the situation in the Irish Free State to that in the Union of South Africa. In both countries there was an intense and sensitive nationalism. The Free State had accepted the status of co-equality with Great Britain although the Treaty was opposed by part of the population. A declaration such as had been suggested would be of little value if contradicted by the facts. There are certain anomalies and anachronisms which appear to be of denial of equal status and which should be removed. He referred to the questions of the power of disallowance of Dominion legislation; of the exequaturs to Consuls; of extra-territorial jurisdiction; and of relations with foreign Governments. All these matters should be adjusted and in so far as they can be met, every sacrifice of form will be more than compensated by increase of satisfaction.

LORD BALFOUR said that any point which the Irish Free State desired to raise would receive sympathetic consideration.

MR. O'HIGGINS accepted Mr. Amery's suggestion to refer all these points to a Sub-Committee.

MR. FITZGERALD said that in the memorandum E. 104 there was much with which he disagreed on grounds of policy rather than of detail.

SIR AUSTEN CHAMBERLAIN said that the main question was how can we in signing a treaty present to the world that each self-governing part of the

Empire is free to sign without committing other parts and yet all the signatures commit the whole Empire. The scheme embodied in memorandum E. 104 was intended to meet the requirements.

LORD BALFOUR said that the design underlying the memorandum was that in the signature of treaties we preserve the unity of the Empire and the freedom of all parts of it.

MR. FITZGERALD remarked that the unity of the Empire had been sufficiently stressed, but the national consciousness is more likely to be under-estimated.

MR. AMERY'S suggestion that a Sub-Committee should be appointed was then accepted.

SIR AUSTEN CHAMBERLAIN suggested that at the next meeting the Committee might consider generally the question of improvements in the machinery for Inter-Imperial consultation and the conduct of foreign affairs.

The Committee agreed to consider this subject at a further meeting.

2, *Whitehall Gardens, S.W.* 1.

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Printed for the Imperial Conference. November 1926.

MOST SECRET. **Copy No.** 6

E. (I.R.—26.) 2nd Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MEETING OF PRIME MINISTERS (OR HEADS OF DELEGATIONS), HELD IN THE PRIVY COUNCIL OFFICE, ON FRIDAY, OCTOBER 29, 1926, *at* 3 P.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and for the Colonies.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

Newfoundland.

The Hon. W. S. MONROE, Prime Minister.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

India.

The Right Hon. the EARL OF BIRKENHEAD.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*

No Minutes were kept.

Two draft declarations, with regard to the relative status of Great Britain and the Self-Governing Dominions, prepared by General Hertzog and Lord Balfour respectively, were discussed.

A fresh draft was prepared as a basis for consideration at the next Meeting, which was arranged for *Monday, November* 1, 1926, *at* 4·30 P.M.

2, *Whitehall Gardens, S.W.* 1,
October 29, 1926.

Printed for the Imperial Conference. *November* 1926.

MOST SECRET. **Copy No. 6**

E. (I.R.—26.) 3rd Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MEETING OF PRIME MINISTERS OR HEADS OF DELEGATIONS), HELD IN THE PRIVY COUNCIL OFFICE, ON MONDAY, NOVEMBER 1, 1926, AT 4·30 P.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and for the Colonies.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C, Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

Newfoundland.

The Hon. W. S. MONROE, Prime Minister.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

India.

The Right Hon. the EARL OF BIRKENHEAD.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*

NO Minutes were kept.

THE COMMITTEE discussed the draft declarations prepared at the previous meeting on the 29th October and the "Concise description of the relations which the seven Self-Governing portions of the Empire bear to each other, and to the Empire as a whole," prepared by Lord Balfour on the 1st November.

As the result of the meeting, a fresh draft statement was prepared as a basis for discussion at the next meeting.

2, *Whitehall Gardens, S.W.* 1,
November 1, 1926.

Printed for the Imperial Conference. November 1926.

MOST SECRET. **Copy No. 6**

E. (I.R.—26). 4th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MINUTES OF THE FOURTH MEETING OF THE COMMITTEE, HELD IN THE CABINET ROOM, FOREIGN OFFICE, S.W. 1, ON TUESDAY, NOVEMBER 2, 1926, AT 4·30 P.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. VISCOUNT CAVE, G.C.M.G., Lord Chancellor.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and the Colonies.

The Right Hon. Sir DOUGLAS HOGG, K.C., M.P., Attorney-General.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

The Hon. N. C. HAVENGA, Minister of Finance.

Newfoundland.

The Hon. A. B. MORINE, K.C., Minister without Portfolio.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

The Hon. E. LAPOINTE, K.C., Minister of Justice.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

The Right Hon. Sir FRANCIS BELL, G.C.M.G., K.C., Minister without Portfolio.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

Mr. P. McGILLIGAN, T.D., Minister for Industry and Commerce.

Mr. J. COSTELLO, K.C., Attorney-General.

India.

The Right Hon. the EARL OF BIRKENHEAD, Secretary of State for India.

Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee.*
Mr. G. G. WHISKARD, C.B. (Dominions Office), *Joint Assistant Secretary to the Committee.*

MR. O'HIGGINS stated that it might be desirable to supplement the Memorandum (E. 115), which the Irish Free State Delegation had circulated to the Conference, by some reference to the history of the question. In June, 1922, when the Constitution was under discussion, the Prime Minister (Mr. Lloyd George) addressed a letter to the Irish Free State representatives asking for specific answers on six questions, one of which was: "Was it intended to provide for appeals to the King in Council?" In their reply to this question, the Irish Free State representatives argued that there was a difference between a composite State, such as Canada, and a unitary State, such as South Africa or the Free State. In the former there might be need for an outside tribunal to deal with questions which arose between the State Governments and the Federal Government, but there was no such need in a unitary State. The Free State representatives were, however, assured that the practice of the Judicial Committee would be the same in the case of appeals relating to the Irish Free State as in the case of appeals from other unitary States, and that appeals would only be admitted in cases of the first magnitude. They were further assured that the appeal to the King in Council was a necessary corollary of the Treaty, and they then accepted that view, with the result shown in Article 66 of the Constitution.

Since that time the practice with regard to such appeals from Irish Free State courts—perhaps for reasons of geography—had tended to differ from that observed in the case of appeals from other Dominions. The Irish Bar liked the appeal, but, if a plebiscite were taken, they would be the only persons in the Free State who would favour its continuance. The appeal to the King in Council was regarded in Ireland as a rich man's appeal. Having now a greater familiarity with the constitutional mechanism of the British Empire, the Free State were inclined to doubt whether the continuance of the appeal was a necessary consequence of the Treaty. Was it maintained that it was not open to other Dominions to restrict or abolish the appeal if they so desired? Those who retain it, retain it because they need it and value it, and not because they are compelled to retain it. He put it to the Committee that it was open to any State in the Empire to say that they desired to dispense with the appeal, and that was the point which he hoped the Committee would discuss.

Mr. O'Higgins added that when recently, in the Dail, he had said that the court which advises His Majesty on these appeals was a "bad court" he did not mean that it was inherently bad, but that it was bad from the point of view of the Free State—it favoured the long purse.

The Free State was a unitary State, and, as such, there was no need for this appeal. If the practice, which is now beginning, continues to grow, the appeal will become, as was the appeal to the House of Lords before the Treaty, an appeal as of right or as of course. When Article 66 of the Constitution was before the Dail, the representative of Trinity College, Dublin, Mr. Fitzgibbon, who is now a judge of the Supreme Court of the Irish Free State, said that he neither hoped nor believed that the appeal would be a reality. That was the view which the representative of the old Unionists then took. If the citizens of the Free State could not rely upon the Free State courts to do justice, then certainly the existence of the appeal to the King in Council was no sovereign remedy.

THE LORD CHANCELLOR stated that the question whether provision as to an appeal from the courts of the Irish Free State to the King in Council should appear in the Constitution was specifically discussed when the Constitution was framed in 1922, with the result which appears in Article 66 of the Constitution. The appeal flowed from the Treaty. He did not know what had taken place on this point during the discussions leading up to the Treaty, but he accepted Mr. O'Higgins's statement as to the South African analogy. He could not agree, however, that that analogy had not been followed. The practice of the Judicial Committee was to refuse leave to appeal unless some important principle of law or some question of wide public interest was involved. That rule he accepted, although he admitted that whether it had been followed in past cases might be a matter of opinion. Leave to appeal from the Irish Free State Courts had, so far, been given in only two cases out of about ten, and in only one of those had any objection been taken. In that case the Irish Free State Government had taken action, which was he admitted both ingenious and effective, in that it had passed a law that the Act on which the question arose was to be interpreted in the manner decided by the Supreme Court of the Irish Free State, from which leave to appeal had been granted. The result was that, as the Judicial Committee would be bound by that legislation, any appeal would have been ineffective, and the appeal was therefore withdrawn.

As to the value of the Court, he had, of course, nothing to say. It was composed of very distinguished lawyers, not only from this country, but from the Dominions. Mr. Justice Duff of Canada constantly assisted them. Last year they had on the Board the Chief Justice of Canada, Mr. Anglin, and two years ago Sir Adrian Knox, the Chief Justice of Australia. It was a Court which was perhaps better fitted for its particular function than the House of Lords.

The question which Mr. O'Higgins asked is: Can any one Dominion abrogate the right to grant leave to appeal to His Majesty in Council? As a matter of *law*, he was satisfied that any such abrogation could only be effected by an Act of the Imperial Parliament, but he thought that all the Governments there represented would hold that, if the Dominions thought that there ought to be a change as regards the appeal, then their opinion would merit the most serious consideration. But this was a question which affected the whole Empire. The appeal was one of the central prerogatives of the Crown; it was one of the links which bound the whole Empire together. If there was a grievance, it must be dealt with on its merits. But if, in fact, there was no active grievance, they should hesitate before they weakened that particular prerogative.

The position of the Irish Free State was singular. The Agreement, as a result of which Article 66 appeared in the Constitution, was very recent. It seemed to him that it was too early to ask for a modification of that instrument. He suggested that the best course would be to postpone further consideration of the question until the next Conference.

MR. O'HIGGINS raised the question whether Article 66 of the Constitution was, in fact, a necessary corollary of the Treaty. Assuming that Canada desired to abolish the right to grant leave to appeal, had she not the power to secure that abolition? If the right of the Free State to do so were challenged, it followed that the right of every other Dominion was equally challenged. If that was the contention of the British Government, let them say so. He put it to the Committee that, in fact, it was not so. Any such contention would be entirely inconsistent with the principles of " co-equal status " and " survivals existing by consent," of which they had heard so much during the last few days. Was this one of those survivals? Could the Parliament of the Irish Free State not legislate to restrict this appeal, and could not the Parliaments of Canada, Australia, and the other Dominions do likewise? If evidence of the desire of the Irish Free State to restrict the appeal were desired, he would mention that the law to which the Lord Chancellor had referred was passed through both Houses of their Parliament without a division, because not even the representatives of the Unionists were willing to take the view that they approved of the admission of the particular appeal which was in question.

He maintained that the present position was impossible. All kinds of trumpery cases were being brought across to the Privy Council and leave to appeal refused. There was a conscious and deliberate effort to widen the appeal and to make it a matter of course. If the door to the Privy Council were left as open as it was left in the Constitution, this state of things would continue.

Without prejudice to his former view that the appeal could be abolished, he maintained that it could, at any rate, be restricted. If the right of the Irish Free State Parliament to abolish the appeal were admitted, exclusion of the appeal would not necessarily follow, only its definition and limitation. But, if the right of the Irish Free State to exclude the appeal were questioned, it was questioned for all the Dominions. And, if so, it was clearly an infringement of the principles of autonomy and co-equality.

LORD BIRKENHEAD stated that he agreed with Mr. O'Higgins' historical account. It was not desired by the Irish representatives at the Treaty negotiations that the appeal should be mentioned in the actual Treaty and that appeared to him to have been a very reasonable desire. But the matter was discussed in those negotiations, and the point at issue was not whether there should be an appeal or not, but whether that appeal should be to the House of Lords or to the Judicial Committee. Then came the discussion of the Constitution. Article 66 was inserted by mutual consent, and it was now the law.

The question raised by Mr. O'Higgins was whether a self-governing Dominion had the power to come to the British Government and say that they no longer desired the appeal to be maintained and that they preferred to be in exclusive control of all judicial matters within their own jurisdiction. In answering it he was speaking for himself alone. Technically, the Dominions had not that right: Imperial

legislation would be required to effect that desire. But would such legislation be withheld? He had no doubt that, if Canada, or Australia, or New Zealand, or South Africa, desired such legislation, in the end and after discussion such legislation would be passed. He himself, as Lord Chancellor, had expressed himself in this sense, in public, and his words had been recorded.

LORD BIRKENHEAD then paid a tribute to the great experience, unremitting industry, and complete impartiality of the Judicial Committee. He hoped that, in the future, as in the past, it might be the means of maintaining the close association of English and Irish lawyers.

Finally, Lord Birkenhead said that he agreed that the right to grant leave to appeal from the Free State courts ought to be most rigidly delimited, and he would have thought that a sub-committee might usefully be set up for the discussion of a formula for such delimitation. He hoped that by some such means Mr. O'Higgins's "major purpose" might be met.

MR. O'HIGGINS said that he was not present at the treaty discussions, but that he accepted Lord Birkenhead's statement that the question of appeals had been discussed. He repeated that, if their right to abolish the appeal was challenged, then the right of every Dominion represented at the Conference was also challenged. No doubt the Irish Free State might not wish, in fact, to abolish the appeal, but if they entered into the limiting discussion proposed by Lord Birkenhead, it could only be without prejudice to their claim that they already had the power to abolish the appeal.

MR. MACKENZIE KING asked whether he was to understand that the Lord Chancellor held the view that the prerogative right could only be affected for any Dominion by the unanimous consent of all the Dominions. He admitted that Imperial legislation would be required in order to affect the prerogative right, but he thought that, if any Dominion asked for such legislation, the request should receive the sympathetic consideration of the British Government.

THE LORD CHANCELLOR and LORD BIRKENHEAD assented.

MR. LAPOINTE said that the Judicial Committee as an institution was highly valued in Canada and a large majority of the Canadian people desired to preserve the appeal, but there had been a great deal of comment on the "Nadan" case. In Canada they had always claimed that the Canadian Parliament had plenary power within its jurisdiction, but the Judicial Committee had decided, by virtue of the Colonial Laws Validity Act, that this was not so in judicial matters, and the principle of equality of status had thereby received a decided set-back in Canada. They had managed to postpone discussion of the matter in Parliament so far, but it would certainly come up next session. The Canadian Government would probably have to ask the Imperial Government to legislate so as to meet the Canadian wishes as regards criminal appeals. He asked whether the Imperial Parliament could not regard the Canadian Act of 1888, which had been found to be invalid, as an expression of the will of Canada, and take action to give effect to that will without the necessity of an address from the Canadian Parliament being presented for that purpose.

THE LORD CHANCELLOR said that, if the Canadian Government asked the Imperial Government to adopt that course, their request would certainly have very great weight. He repeated that legislation here would be involved.

THE ATTORNEY-GENERAL explained that, in arguing the Nadan case before the Judicial Committee, he had, of course, been dealing solely with the interpretation of the Statutes as they stood. Any question of policy was for the Governments and not for the Courts.

MR. BRUCE said that in the Commonwealth Constitution provision had been made limiting the right of appeal. The Commonwealth was in a different position from that of the Free State or of South Africa, and they would be very reluctant to accept abandonment of the leave to appeal, although at the time of the Federation the matter was strongly fought. If, however, the Commonwealth at any time definitely indicated that it did not desire the appeal to continue, they would expect that desire to be met. This point, however, was met by Lord Cave's answer to Mr. Mackenzie King.

LORD CAVE intimated that in such a case the British Government would no doubt try to persuade Australia to retain the appeal, but that if its abolition was insisted upon they would probably in the end meet the views of the Commonwealth.

GENERAL HERTZOG said that in 1909, when the South Africa Act was framed, the Union were given to understand that if at any time they desired to eliminate the appeal there would be no objection to that course. As a matter of fact, they desired at that time to keep it, and the feeling of the present Union Government was the same. Many of their people would, no doubt, favour the elimination of the appeal, but many others would not favour it. Since the Judicial Committee had recently adopted the practice of limiting the grant of leave to appeal, the feeling against the appeal had much diminished. Of course, the question of national prestige was also involved, but his impression was that the more the Dominions felt their equality with Great Britain the stronger would be the feeling for retention of the appeal. He would not personally, nor would the Union Government as a whole, advise doing away with the appeal.

As regards the question of law, the Union Government felt that the South Africa Act gave them the right to change anything in that Act, including the provision as to the right of appeal, by legislation in their own Parliament, but it might be open to question whether the Judicial Committee could take judicial notice of such legislation. General Smuts, in a memorandum which he had prepared in 1921, and in a statement which he had made to the Imperial Conference of that year, had recommended action by the British Government in order to make it clear that if any Dominion desired to abolish the appeal it should have the right to do so. He concurred in that view, though he admitted that, should any Dominion desire to exercise the right of abolishing the appeal, discussion with the British Government would be necessary by way of courtesy and in order to obtain the necessary aid.

LORD BALFOUR said that two propositions appeared to him to emerge from the discussion. First, that the Committee was of opinion that it was no part of the policy of the Empire to maintain an appeal to the Judicial Committee in any of the self-governing Dominions against the wishes of its inhabitants. Secondly, that in many parts of the Empire the services of the Judicial Committee were greatly valued.

MR. COSTELLO said that he wanted to safeguard the position from the legal point of view. The Irish Free State Government contended that the Colonial Laws Validity Act did not apply to the Irish Free State, and they were therefore unable to subscribe to the view that, if they desired to abolish the appeal, Imperial legislation would be necessary, as in Canada, to carry that desire into effect.

LORD BALFOUR remarked that it seemed to him that, for their present purpose, the more important point was whether the two propositions which he had suggested were acceptable. What, apart from their legal claim, did the Free State desire in practice?

MR. O'HIGGINS said that, in the abstract, the Free State claimed the right to abolish the appeal altogether. If that right were admitted, they would not necessarily abolish the appeal, but might merely restrict it.

He contended that, as a result of the discussions which had taken place in this Committee and elsewhere, there was a strong case for repealing the Colonial Laws Validity Act in regard to its application to the self-governing Dominions on the ground that it ran contrary to the principle of equality of status.

MR. AMERY said that on the main constitutional issue all the Governments were agreed on the principle of equality and in the view that, in so far as there were any constitutional survivals contrary to that principle, they could be altered by agreement if they created inconvenience. It was useless, however, for the Committee to discuss an abstract legal point, which only a Court of Law could decide. Let them, therefore, deal with the matter as a practical question, and set up a sub-committee either for the purpose of formulating the limits within which appeals from the Irish Free State Courts should be allowed, or, alternatively, to frame a constitutional pronouncement on the lines indicated by Lord Balfour.

LORD BIRKENHEAD said that it appeared to him that Mr. O'Higgins was really willing, without prejudice to either of his major contentions, to discuss possible limitations on the exercise of the right to appeal, so long as it exists in relation to the Irish Free State.

SIR FRANCIS BELL said that, inasmuch as New Zealand had a repugnancy clause in its Constitution, no doubt existed as to the necessity for an Imperial Act if they desired to abolish the appeal, but they did not so desire. Mercantile and shipping interests in the Dominion had always insisted on its retention, and New Zealand did not admit that any one Dominion had the right to abolish the appeal without the consent of the others. He could not, therefore, agree to Lord Balfour's first proposition, though he would be unwilling to press his objection.

LORD BALFOUR suggested to Mr. O'Higgins whether it might not be politically wise not to press at the moment for any change in the position as regards the Irish Free State. He had greatly admired the manner in which the Government of the Irish Free State had dealt with the difficulties which had confronted it during the last four years. It must, however, be recognised that difficulties still existed both as regards the republican extremists and as regards the minority which regretted the separation from Great Britain. Would it not give cause for alarm if the Irish Free State were to try at this stage to abolish a right which is formally recorded in the Instrument creating the Irish Free State? By all means limit the right of appeal in trivial cases, but keep it as a "bulwark of great principles."

MR. O'HIGGINS replied that the process of reconciling the Republican extremists would be expedited by the recognition of the right to remove any evidence of subordination to Great Britain. As to the other minority, it created no difficulties and presented no problems. The ex-Unionists were among the best citizens the Irish Free State had, and, as he had already explained, they set no store on the maintenance of the appeal.

He was prepared to act on the suggestion of Lord Birkenhead for discussing the restriction and limitation of the right of appeal, but it must be without prejudice to the basic position of the Irish Free State.

MR. MORINE stated that Newfoundland was satisfied with the present position. They valued the existing right of appeal, and regarded it as fully consistent with the principles of co-equality. In his opinion, British Ministers were going dangerously far in suggesting readiness to legislate in order to take away the prerogative right of appeal.

LORD CAVE stated that he would feel some difficulty in agreeing to a discussion with the representatives of the Irish Free State with a view to limiting the cases in which leave to appeal could be granted. The Judicial Committee was a wholly independent body, and it was not possible for the British Government to negotiate with one Dominion as to the rules by which that body was governed. Those rules affected all Dominions alike. Could the matter not be left until some Dominion made a definite request for an alteration in the present position?

MR. HAVENGA said that he thought it would be a pity to leave the matter open. As matters stood, this would be equivalent to an invitation to one or other of the Dominions to raise the question at once.

After some further discussion, it was agreed :—

1. That Lord Balfour's first proposition should be circulated to the members of the Committee forthwith (a copy of this is attached as an Appendix).
2. That members of the Committee should be invited to circulate any modifications therein which they might desire to have discussed.

The question of a meeting between Lord Birkenhead and Sir Douglas Hogg (or other Ministers) and the Representatives of the Irish Free State to consider whether, without prejudice to the wider claim of the Irish Free State, it was possible to arrange for the principles upon which leave to appeal should be granted in the future to be more precisely defined was left over for further discussion.

2, *Whitehall Gardens, S.W.*,
November 2, 1926.

APPENDIX.

Lord Balfour's First Proposition.

The Committee is of opinion that it is no part of the Policy of the Empire to maintain an appeal to the Judicial Committee of the Privy Council in any of the self-governing Dominions against the wishes of its inhabitants.

Printed for the Imperial Conference. November 1926.

MOST SECRET. **Copy No. 6**

E. (I.R.—26). 5th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MINUTES OF THE FIFTH MEETING OF THE COMMITTEE, HELD IN THE CABINET ROOM, FOREIGN OFFICE, S.W. 1, ON WEDNESDAY, NOVEMBER 3, 1926, AT 4·30 P.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. VISCOUNT CAVE, G.C.M.G., Lord Chancellor.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and the Colonies.

The Right Hon. Sir DOUGLAS HOGG, K.C., M.P., Attorney-General.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

The Hon. N. C. HAVENGA, Minister of Finance.

Canada.

The Hon. E. LAPOINTE, K.C., Minister of Justice.

New Zealand.

The Right Hon. Sir FRANCIS BELL, G.C.M.G., K.C., Minister without Portfolio.

Irish Free State.

Mr. P. McGILLIGAN, T.D., Minister for Industry and Commerce.

Mr. J. COSTELLO, K.C., Attorney-General.

India.

Mr. D. T. CHADWICK, C.S.I., C.I.E., Secretary to the Government of India, Commerce Department.

The following were also present:

Irish Free State.

Mr. J. J. HEARNE, Assistant Parliamentary Draughtsman.

Mr. E. J. SMYTH, Principal Officer, Department of Industry and Commerce.

Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee.*

Mr. G. E. BAKER, C.B. (Board of Trade)
Mr. P. A. KOPPEL, C.B.E. (Foreign Office)
Mr. C. W. DIXON, O.B.E. (Dominions Office)
} *Joint Assistant Secretaries to the Committee.*

LORD BALFOUR said that, as the question of the laws relating to merchant shipping had been raised by the Irish Free State delegation, he thought that it would be most convenient if the representatives of the Free State would in the first place make a general statement as to the position.

MR. McGILLIGAN then made the following statement :—

"The question of the legislative powers of the legislatures of members of the Commonwealth of Nations has been adverted to in official correspondence and memoranda which have passed between the British Government and the Governments of those members from time to time. Discussion on the subject took place at the Navigation Conference of 1907. The object of that Conference was referred to in the despatches sent on the 8th day of March, 1905, by Mr. Lyttleton to the Governor-General of Australia and the Governor of New Zealand. These despatches were largely similar in terms and stated that His Majesty's Government had, as a result of the introduction of the Commonwealth Navigation Bill and the then recent passage of a comprehensive Act in New Zealand, been led to the conclusion that the time had come when 'the whole situation should be reconsidered in the light of the experience of the ten years since the Merchant Shipping Act, 1894, was passed.' The Navigation Conference met in London on the 26th day of March, 1907, under the Chairmanship of Mr. Lloyd George, President of the Board of Trade. At an early stage in the proceedings the Hon. W. M. Hughes, Australian Delegate, said that 'a suggestion was made as to what the powers of the respective Colonial Governments are and the extent to which they could exercise these powers,' and asked whether that question might be taken first. The Chairman replied that 'he would not raise constitutional issues if he could possibly avoid it.' During the discussion which took place much divergence of opinion was displayed. The Hon. W. M. Hughes is reported at page 62 of the official Report of the Proceedings as follows :—

> "'I want to say in my opinion we have plenary power in respect of making laws with regard to navigation and shipping subject only to our Constitution Act and the King's Assent, and that the sections of the Merchant Shipping Act do not apply to us at all.'

"Mr. H. Bertram Cox, of the Colonial Office, said that he was unable to agree to that. To which Sir William Lyne (Australian Delegate) replied :—

> "'I say that sections 735 and 736 do not apply to us.' (Report of Proceedings, p. 62.)

"The important resolution passed by the Conference was Resolution No. 9, which embodied the agreement reached at the Conference as to the basis on which the Shipping Legislation of Australia and New Zealand should proceed. Agreement was reached upon considerations of expediency and practical convenience, and the Resolution left the question of the legal and constitutional position still outstanding. Resolution No. 9 of the Navigation Conference is as follows :—

> "'That the vessels to which the conditions imposed by the law of Australia or New Zealand are applicable should be (*a*) vessels registered in the Colony, while trading therein, and (*b*) vessels wherever registered, while trading on the coast of the Colony; that for the purpose of this Resolution a vessel shall be deemed to trade if she takes on board cargo or passengers at any port in the Colony to be carried to and landed or delivered at any port in the Colony.'

"At the Imperial Conference of 1911 attention was called to the question of legislative powers in the matter of merchant shipping by a Resolution which appeared on the agenda of the Conference in the name of the Government of New Zealand. The Resolution was as follows :—

> "'That the self-governing oversea Dominions have now reached a stage of development when they should be entrusted with wider legislative powers in respect to British and foreign shipping.'

"In the course of the discussion Sir Wilfrid Laurier said :—

> "'We are prepared on our part to support the Resolution of Sir Joseph Ward . . . .'

"Sir Wilfrid then referred to the terms of the Resolution, and proceeded:—

"'My contention has always been, and is, that under our respective Constitutions, at all events, the Constitution of Canada, our powers to legislate for shipping are plenary and that any legislation we pass as to shipping is not only valid but enforceable in law. But the point of difficulty is that whilst, in my judgment, the powers conferred on the Dominion of Canada to legislate on shipping, and I presume the other Dominions also, are plenary and absolute, the British Government, in granting the power of self-government to the Dominions, has reserved to itself the power of disallowance, and when legislation is passed of preventing the sanction and putting into force of any such legislation which they think objectionable. While, as I say, the United Kingdom here has asserted to itself the power to disallow any legislation which it is in the power of the self-governing Dominions to pass, it is very chary of exercising that power, except in matters of shipping, whereon it has always maintained the doctrine that it had the power to supervise the legislation passed by the self-governing Dominions. That is a question of policy more than a question of law, and I do not think that we require any more power than we have at the present time to pass an Act, and, after that Act is passed, it is valid absolutely.'

"Asked whether he was keeping in mind the provisions of the Merchant Shipping Act, 1894, which limited the power of the oversea Dominions, Sir Wilfrid replied:—

"'I am,' and continued: 'This power is granted to us in our Constitution, but whether it is a question of law or policy I sympathise with the object of the Resolution whether it is raised in one way or the other. I say I sympathise with that, because we in Canada intend to keep to our doctrine that our powers in shipping are plenary.'

"Sir Wilfrid went on to say that the legislature of New Zealand had passed a law which they believed to be essential for the welfare of their country, and that the British Government had taken up the position that this was an interference with the power which they had asserted to themselves. 'It is not because they think it an infringement on their powers, but, as I think, because they believe also it is bad policy. I sympathise with the object of the Resolution, whether you meet it in one way or the other, whether according to my own views or the views of Sir Joseph Ward and the New Zealand Government' (Report of proceedings, p. 406). Mr. Buxton, President of the Board of Trade, expressed the views of the British Government on the resolution. He said:—

"'The present principle of merchant shipping legislation is fairly plain and simple. Broadly speaking, the code of law the ship is the code of the country of registration, and that code follows the ship round the world. This general principle is modified in its application to the various parts of the British Empire by two other principles: (1) That they have full power to regulate their own coasting trade even though the ships engaged in it are registered in the United Kingdom or in foreign countries; (2) that as regards ships other than their own registered ships, and other than ships engaged in their coasting trade, their legislative powers are restricted to their territorial limits, and are, therefore, inoperative on the high seas. There is an exception in regard to certain powers expressly conferred on Australia by section 5 of the Australian Constitution Act, which deals with so-called "round voyages," which begin and terminate within the Commonwealth. There are various points which might be held to be included in and covered by this Resolution of Sir Joseph Ward's to which we could readily assent. For instance, if New Zealand desires to have some power analogous to that which Australia now possesses to regulate round voyages, or if New Zealand desires that the Dominions should be empowered to pass reciprocal legislation providing that the labour legislation of each Dominion should apply to merchant vessels registered in such Dominion while in the territorial waters of the other Dominions, we would not stand in the way. Or, perhaps, the Dominion of Canada desires, as Mr. Brodeur mentioned the other day, that

steps should be taken definitely to validate certain Canadian laws affecting Canadian shipping and the Canadian coasting trade, the validity of which is in doubt. On all these matters, although there may be difficulties in detail in arriving at a satisfactory understanding, they are not insuperable, nor is there any objection in principle. But in this case the Resolution should be more definite and restricted in its language (p. 412).

" ' Sir Joseph Ward said: " I want to say here that I propose to put on record what the powers of the overseas Dominions are in connection with shipping matters, because my friend Sir Wilfrid Laurier, in the speech he delivered to the Conference, expressed the opinion that they had the power in Canada to do what we are seeking to obtain. I am inclined to think that all powers are alike, and I want to state what the legislation on the matter is." '

" Sir Joseph then read the text of sections 735 and 736 of the Merchant Shipping Act, 1894, and continued :—

" ' It will be seen, therefore, that the powers are restricted to the repeal of certain provisions of the Imperial Merchant Shipping Act relating to ships registered in the possession and to the regulation of the coasting trade. Even in these two matters the Colonial Acts are not to come into force until assented to by His Majesty. I want to direct attention to what the general law is.

" ' The Resolution consequently is intended to give us wider powers than are contained in the Imperial Merchant Shipping Act to which I have just referred, and in the case of the trouble existing in New Zealand without the power to amend our law to meet our particular purposes, concerning which the Royal Assent is withheld in the meantime to that Bill which has passed through both branches of the Legislature in New Zealand, then we are powerless to meet that position which I indicated before that has arisen, and so is each of the self-governing Dominions powerless to meet a position similar to that if it arises in their country ' (pp. 416, 417).

" Sir Wilfrid Laurier again intervened in the discussion to the following effect :—

" ' I stated earlier in the day that in Canada we are disposed to support this resolution of Sir Joseph Ward's, and the discussion which has just taken place has emphasised in that direction the position we said we would take. Sir Joseph Ward has just stated that this question is governed by the Imperial Statute, 1894. That is the reason why, if it is so, I would be more disposed to record our vote for this. The position we have taken up on this question is that, by the British North America Act, the Act which constituted the Dominion of Canada, we have received plenary power to legislate on Shipping. That position we take up.'

" At that stage Mr. Buxton (President of the Board of Trade) said :—

" ' Was not that merely a consolidating Act—the Act of 1894? It did not give further power beyond what existed before ' (p. 418).

" And Mr. Buxton added :—

" ' There was no intention of either limiting or extending the existing powers ' (p. 419).

" Later in the discussion Sir Joseph Ward, following some remarks made by Mr. Pearce, the Minister for Defence of the Commonwealth of Australia, said :—

" ' The position, even if you legislate upon the assumption that you have the power to do what you say, is that the Governor-General of Australia would be bound to hold that legislation over, after it had been passed by both Houses of your Parliament, to be referred to the Home Government in order to obtain the Royal Assent ' (p. 421).

" Both General Botha (Prime Minister of South Africa) and Mr. Fisher (Prime Minister of Australia) abstained from voting on the New Zealand Resolution on the ground that if they voted it might seem to be an admission that the Union and the Commonwealth had but limited powers in the matter of merchant shipping legislation. The resolution was not carried. New Zealand

and Canada voted for it, but the other four parties did not vote. The British Government gave no undertaking in regard to the matter raised by the New Zealand resolution and there the position was allowed to stand.

" In the course of the discussion on the New Zealand resolution at the Conference of 1911, Mr. Pearce referred to the memorandum prepared by Mr. Cunliffe, solicitor to the Board of Trade, on the subject of the legislative powers of the self-governing Dominions in relation to Merchant Shipping. The memorandum referred to was prepared in reference to the New Zealand Shipping and Seamen's Act, 1903, and in a despatch, dated the 18th September, 1908, sent by the Earl of Crewe, Secretary of State for the Colonies to the Governor-General of Australia, it is referred to in connection with ' the extent to which the provisions of the Merchant Shipping Act, 1894, apply to His Majesty's Dominions.' Mr. Cunliffe's memorandum, therefore, represented the mind of the British Government in the year 1908, and, having regard to the fate of the resolution put down for the Imperial Conference of 1911, it is possible that the memorandum may represent the mind of the British Government at the present time. In the course of his remarks, Mr. Cunliffe says :—

> " ' *It is essential*, in dealing with Colonial legislation on such a subject as this, to bear in mind that the Merchant Shipping Act, 1894, is an Imperial Act, and that as regards the matters with which it deals the general powers of a Colonial legislature, so far as they are expressly given, are to be found in sections 735 and 736 of the Act. From these two sections and section 713, and subject to the remarks on special subjects which I will note hereafter, it is clear that *from a general point of view* the Imperial Act does not contemplate that a colony shall as regards the matters dealt with by the Act do more than legislate (by way of specific repeal with an implied or recognised power of new enactment) for ships registered in its possession or regulate its own coasting trade. . . . . *It is also necessary* to remember that certain provisions of the Imperial Act, *e.g.*, the provisions as to emigrant ships, so far as they apply, cannot be altered by Colonial legislation, because, as regards such of these matters as are dealt with in the Imperial Act the powers of a Colony (subject to some special provisions in Part III, which are referred to later on) are restricted by section 735.'

" Mr. Cunliffe entered into a detailed examination of various sections and of the fourteen Parts of the Merchant Shipping Act, 1894, with a view to emphasising those sections and Parts which, in his judgment, were ' of Imperial force.'

" A memorandum entitled ' Summary of Evidence and Memorandum *re* Jurisdiction ' prepared by the Hon. R. R. Garran, Secretary to the Department of the Attorney-General of the Commonwealth of Australia, dated the 19th January, 1906, contains a very careful and illuminating commentary upon the position of the self-governing Dominions in the matter of their legislative powers in relation to shipping. Mr. Garran's memorandum was accepted by the Government of the Commonwealth as being a statement of their official views. His Majesty's Government were ' unable to agree ' with the Government of the Commonwealth as to the power of the Government of the Commonwealth to legislate ' in regard to navigation.'

> " ' His Majesty's Government (said the Earl of Crewe in the despatch to the Governor-General of Australia, dated the 18th September, 1908) are advised that the views expressed in Mr. Garran's memorandum as to the extent to which the provisions of the Merchant Shipping Act of 1894 applied to His Majesty's Dominions are not on the whole correct.'

" It is not indicated in the despatch what views expressed in the memorandum are incorrect, or to what extent any of the views therein expressed are unsustainable. One of the points at issue between the British Government and the Government of the Commonwealth on the Navigation Bill, 1907, was whether or not when the certificate of a master or officer was cancelled by a Court of Marine Enquiry in Australia and returned to such master or officer by the Board of Trade, such master or officer should be allowed to serve in Australia on board any ship in the capacity specified in the certificate so cancelled and returned. The point arose on Section 369 of the Navigation Bill. The British despatch already referred to commented on Section 369 of the Navigation Bill as follows :—

"The making of Orders in Council made under the Merchant Shipping Act, 1894, results in the exercise by the British Government of control of, or of a veto on, legislation passed by the legislatures of members of the Commonwealth of Nations. The exercise of such control or of such a veto is no longer sustainable on constitutional grounds, nor is it sustainable on grounds of practical necessity and as a means of ensuring uniformity in the administration of laws relating to merchant shipping. If any objection is to be made by the British Government to the terms of legislation passed by the Parliament of any Member of the Commonwealth of Nations, it should be made by that Government as an interested party, as is done in the case of foreign shipping legislation affecting British vessels through the Foreign Office. Delays in the passing of Shipping Legislation have been caused by the practice of reserving Bills and the insertion of suspending clauses. Uniformity of laws and of administration of laws can be secured by the enactment of reciprocal statutes, which can be enforced in all courts throughout the Commonwealth of Nations in the same way as the provisions of the Merchant Shipping Act, 1894, which are of general application, have heretofore been enforced. In the result, that course would tend to the preservation of the comparative uniformity at present existing and its development in a manner consistent with the present constitutional make-up of the Commonwealth of Nations. The practice of disallowing Bills is based upon a claim of power which, in the language of Sir Wilfrid Laurier at the Imperial Conference of 1911 (Report of Proceedings, p. 406), 'the United Kingdom has asserted to itself.' Whatever reasons may have sufficed to sustain the claim heretofore, it is now a mischievous anomaly in conflict with the principles of a constitutional system in which each member is an independent nation whose status is not susceptible of depreciation or diminution and whose legislative rights are alike inalienable and inviolable. The laws regulating merchant shipping should be made to harmonise with that situation. It should be made clear that every ship registered within the territorial area of any member of the Commonwealth of Nations is a floating portion of the territory of that member, and that no act by or on the advice of any Government (other than the Government of each member) is necessary to give extra-territorial effect to any statute passed by the legislature of such member relating to any such ship. It ought, moreover, to be accepted as an obvious corollary of the principle of co-equality of status of all the members of the Commonwealth that a law passed by the legislature of any member cannot fail to have effect by reason of its repugnancy to the provisions of any statute of the British Parliament.

"Attention should perhaps be called to the Merchant Shipping Acts (Amendment) Act, 1923. That Act amended Section 34 (1) of the Merchant Shipping Act, 1906. Under Section 34 (1) of the Act of 1906, the cost of the treatment, maintenance, return to a home port, &c., of masters and seamen suffering from injuries and illnesses was made a charge on the shipowner, but cases of venereal disease (and cases arising from wilful act or default or misbehaviour) were expressly excluded from the provision. The section operated as regarded all British ships wherever registered and applied to every case except when the ship was within the jurisdiction of the Government of the British possession in which it was registered. The Merchant Shipping Acts (Amendment) Act, 1923, came into operation on the 1st January, 1924, and removed the restriction in case of venereal disease which existed under Section 34 (1) of the Act, 1906. Shipowners became responsible for the treatment, maintenance, return, &c., of seamen incapacitated by venereal disease. The Government of the Irish Free State was not consulted in the matter. It is presumed that the other members of the Commonwealth were not consulted either; the British Parliament has simply legislated for all British ships while outside the territorial waters of the country of registration. The policy of the Act of 1923 was perhaps acceptable to all parties interested with the exception of shipowners. But the fact remains that the British Parliament has in 1923 passed legislation for ships registered at ports in the territorial area of members of the Commonwealth. It is thought that the British Parliament is incompetent to legislate for ships registered in such ports, no matter where such ships may be so long as they are not engaged in the coasting trade of the United Kingdom.

"In October 1923 instructions under the Merchant Shipping Acts (Amendment) Act, 1923, entitled, 'Instructions to Superintendents, Consuls

and Officers in British Dominions, Colonies and Possessions,' were issued by the Board of Trade. Amongst other things, these instructions contained directions for the alteration (in accordance with the Act of 1923) of the ' Instructions to Officers in British Colonies and Possessions ' (Merchant Shipping and Seamen) (1909). That fact shows the continuity that is kept up in the mind of the Board of Trade between the position in 1909 and that in 1924. Instructions issued in 1923 may be regarded by the Board of Trade as merely a means of securing uniformity of practice in the matter to which they relate; but does it not seem to be rather a resort to the exercise of functions the exercise of which is still potentially available to the Board of Trade and will remain so until the statute law relating to shipping is put on a basis in accordance with the existing constitutional position? The venereal disease case is eminently one for international conventions as between the members of the Commonwealth of Nations, like the matters mentioned in the Maritime Conventions Act, 1911. Previous agreement amongst the States concerned should have been come to before legislation was introduced and the agreement embodied in simultaneous legislation by their Parliaments. The Act of 1923 is a further ' assertion to itself ' by the British Parliament of Imperial control in shipping matters."

LORD BALFOUR said that Mr. McGilligan's very able and learned exposition was chiefly devoted to showing that in the evolution of the British Empire certain inequalities had been allowed to remain as regards various questions of maritime affairs. On the general principle of equality of status there was no difference amongst those present. But questions arose in connection with the practical needs of the Empire of functions as distinct from status. The practical aspects of the question could not be ignored, and it was necessary to consider whether the principle of differentiation of function between the various Governments to which he had alluded in his opening statement at the Committee's first meeting should not be applied to shipping questions. Mr. McGilligan was correct in saying that the present position arose from the Act of 1894, which was passed a long time ago. But this was itself a consolidating Act, not substantially altering the law of 1854. Legislation with such a history naturally presented anomalies. We must not merely ask whether in the working of the system there is a difference of function; the question arose what would be the practical effect if those who were called upon to administer mercantile shipping laws, *e.g.*, His Majesty's consuls in foreign countries, had to be guided by the laws of seven different parts of the Empire. Practical matters which had to be considered were questions arising as to the status of British ships in time of war, and as to courts appointed to deal in foreign ports with crimes and offences committed on British ships. We were separated by seas but united by ships. He pointed out that vital questions were involved relating, not merely to the constitutional point of view, but to national safety and prosperity. He suggested that the best course would be to appoint an expert conference, to sit after the Imperial Conference, to consider and report on the whole subject. He had tentatively prepared a draft of the terms of reference to such a conference, which could be discussed by the Committee. This was as follows :—

"To consider and report on the principles which should govern in the general interest the practice and legislation relating to the merchant shipping of the various parts of the Empire, having regard to the change in constitutional procedure which has occurred since existing laws were enacted."

These terms of reference involved a recognition of the change of position, and an implication of equality of status; they also implied the common interest of all parts of the Empire in peace and war and in the practical working of the organisation of British shipping. He would be glad to learn the views of those present on his suggestion.

GENERAL HERTZOG stated that in practice South Africa was not greatly concerned, as there were at present few vessels registered in the Union, and the Union so far had framed little merchant shipping legislation. But the question raised involved the same principle as that already discussed relating to appeals to the Privy Council. The actual present law pointed to the superiority of the British Parliament, and in South Africa it was pointed out that this involved a denial of equal status. It was objectionable to South Africa to feel that she was legislated for by the British Parliament. He suggested that in the first instance we should see that the authority of the Dominion Parliaments was placed on the same basis

as that of the Parliament in Great Britain, and that a committee should then be set up to report on the best method of securing the passing of merchant shipping laws by the Parliaments of each part of the Empire as far as possible in the same form, as is done in the case of conventions adopted at Geneva. Equality should be an actual fact.

MR. BRUCE said that this was an important question in which Australia took a great interest. Australia had in the past made a plucky struggle to obtain control of her shipping, and had, in some respects, obtained what she wanted. The main issue in the past had been—had the Commonwealth Parliament the right to do this, and had the United Kingdom Parliament greater powers? In view of the events of the last five years we had now reached a position where we were prepared to say that there is equality of status; but we cannot say that practices which have been built up over a long time can be altered at once. They might have to exist for a time on a basis of co-operation and general consent. The present appeared one of those cases. Great Britain had a greater interest in shipping than the Dominions, and it seemed desirable to give consideration to that interest without giving up the claim to an autonomous position. It might be desirable that there should be a merchant shipping legislation in common on most matters, with variation on particular points. It is an anomaly from the past that the British Parliament and the British Government have special powers; if this remains for the present an expert committee should be appointed to consider the whole position. The future position would then be that the laws which existed would exist by full consent.

MR. LAPOINTE did not think that there was any objection to Lord Balfour's proposal, provided that the general principle of equal status were accepted. The views held in Canada were substantially those expressed by the representative of the Irish Free State. The question was not one of law but of policy. Canada had two huge coasts and the Great Lakes, and the general view was that she ought to control her own shipping legislation.

MR. BRUCE observed that it would be impossible to repeal suddenly sections 735 and 736 of the Merchant Shipping Act, 1894, without discussion and consideration by the Government and people of Great Britain.

SIR F. BELL said that in the past New Zealand had been the protagonist in the discussion of this question. He pointed out that the legal position was that each Dominion had the right of legislation within its own territorial limits, but not beyond its own territorial limits. One Parliament in the Empire can legislate with respect to ships on the high seas, namely, that of Great Britain. If there was to be legislation for the shipping of the Empire, it must be expressed by the one legislature which had the power to legislate for shipping on the high seas, though the legislation might have to be with the concurrence of the other Governments. The high seas power of the British Parliament was not contrary to the general principle of equality of all Governments in the British Empire, but was a practical legal necessity.

MR. CHADWICK said that India at present derived her constitutional powers from the Government of India Act, 1919; but that India hoped in course of time to reach full Dominion status. India did not make any claim on the ground of status; but did not wish to be excluded from a discussion affecting practically the provisions of the Merchant Shipping Act of 1894. India had great shipping interests, and did not desire an alteration in the present position until after full consideration. It was of fundamental interest that there should be uniformity in essential matters relating to shipping within the British Empire. He referred to a difficulty which had arisen in the Board of Trade regulations with regard to wireless operators. He pointed out the difficulty which would be experienced in securing the passage of an identical Act of some 800 sections in each of the Parliaments of the Empire; difficulty had in practice been experienced in passing a short Act relating to a Geneva Convention.

LORD CAVE thought it desirable that the question should be treated as one of policy and not of law. If it were dealt with as a question of law, there were certain propositions in Mr. McGilligan's statement which he would be bound to question. The uniformity which it was desirable to obtain was difficult to secure consistently with general constitutional principles. He agreed that it would be desirable that there should be a specially qualified conference to deal with the question as a practical matter, and to report to the Imperial Conference or to the Governments of the Empire.

MR. AMERY said that Mr. McGilligan's statement would be very valuable, and he thought that there was little in it with which he personally would have to disagree. The broad principle involved was that where surviving forms were repugnant to the present constitutional position endeavour should be made to do away with them where they created inconvenience or serious misunderstanding. But some such forms might have a practical convenience. He thought that there was agreement that uniformity of merchant shipping regulations was most important. He observed that not the least important of the advantages of belonging to the British Empire was the fact that any British subject not only had the same status in all parts of the Empire, but also in a foreign country had an equal claim upon the good offices of His Majesty's Diplomatic and Consular representatives, and that the rights secured under treaties for British subjects accrued to all British subjects. He thought that there was an analogy to this in the case of merchant shipping. The status of British ships was one which conferred great advantages which ought not lightly to be impaired. Dominion shipping might grow very rapidly, and there might be transfers of British ships from register to register in the Empire. This would, however, be impeded if the transfer involved loss of privileges. This was a question which should be looked into very carefully before any changes were introduced with a view to securing a less anomalous position from the point of view of the present-day constitutional position. As for the suggestions of immediate partial action it would be very difficult to induce the British Parliament to legislate at once to abrogate Sections 735 and 736 of the Act of 1894, if there were a prospect that later on Parliament would be asked to pass further legislation resulting from the deliberations of an expert conference, such as had been suggested. What was contemplated, he understood, was not a sub-committee of the present Conference, but a sub-conference similar to that held in 1907. This was a highly complicated matter which would take months to discuss and could not be dealt with by a small Committee of the Conference.

LORD BALFOUR asked whether he was wrong in assuming that there was unanimity as to the adoption of his suggestion.

MR. McGILLIGAN asked whether it was to be placed on record that the existing merchant shipping law was repugnant to the present constitutional position.

After some discussion the committee accepted Lord Balfour's proposal for the appointment of an expert conference, subject to any requisite explanation in the report of the Committee of Prime Ministers as to the circumstances leading to it, and, if necessary, consideration of the terms of reference of the proposed Conference when the draft report of the Committee came up for consideration.

In reply to an enquiry by MR. LAPOINTE, MR AMERY said he thought it would be desirable that the Expert Conference should meet as soon as possible after the termination of the present Imperial Conference.

2, *Whitehall Gardens, S.W.* 1,
November 5, 1926.

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Printed for the Imperial Conference. November 1926.

MOST SECRET. **Copy No.** 6

E. (I.R.—26). 6th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MINUTES OF THE SIXTH MEETING OF THE COMMITTEE, HELD IN THE CABINET ROOM, FOREIGN OFFICE, S.W. 1, ON THURSDAY, NOVEMBER 4, 1926, AT 11 A.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. Sir AUSTEN CHAMBERLAIN, K.G., M.P., Secretary of State for Foreign Affairs.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and the Colonies.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

The Hon. N. C. HAVENGA, Minister of Finance.

Newfoundland.

The Hon. W. S. MONROE, Prime Minister.

The Hon. A. B. MORINE, K.C., Minister without Portfolio.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

The Hon. E. LAPOINTE, K.C., Minister of Justice.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

Irish Free State.

Mr. P. McGILLIGAN, T.D., Minister for Industry and Commerce.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

Mr. DESMOND FITZGERALD, T.D., Minister for External Affairs.

Mr. J. COSTELLO, K.C., Attorney-General.

India.

The Right Hon. the EARL OF BIRKENHEAD, Secretary of State for India.

The following were also present:

Irish Free State.

Mr. J. P. WALSHE, Secretary of the Department of External Affairs.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*
Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee*

Mr. P. A. KOPPEL, C.B.E. (Foreign Office)
Mr. H. F. BATTERBEE, C.M.G., C.V.O. (Dominions Office)
Mr. JEAN DÉSY (Canadian Delegation)
} *Joint Assistant Secretaries to the Committee.*

LORD BALFOUR read the note which Sir Maurice Hankey had prepared as to the present position with regard to the various questions before the Committee, and asked which question should be discussed first.

MR. MACKENZIE KING observed that there were two leading questions—the representation of the Crown and the representation of the Government. His thought was that the Governor-General should be regarded purely as a representative of the Crown and not as the representative of the British Government, which should have its own separate representative.

MR. AMERY said that there were really two alternatives, whether to take first, the general conduct of foreign affairs or the constitutional point with regard to the position of the Governor-General and the representation of His Majesty's Government in the Dominions?

MR. MACKENZIE KING observed that the two really went together.

LORD BALFOUR said that if Mr. Mackenzie King thought that a good opening it would be well to begin with that.

MR. MACKENZIE KING thought that it ought to be clearly understood that the Governor-General was not the representative of the British Government or any department of the British Government, but solely of the King. Further, he was of opinion that the channel of communication for letters and telegrams with the British Government should be changed. If the Canadian Government was asked in Parliament to bring down papers it was necessary to reply that the correspondence came down from the Governor-General, who must be consulted, and this was liable to misunderstanding.

MR. BRUCE observed that this was not solely a matter of the channel of communication with the British Government. It would still be necessary before publishing papers in regard to any delicate negotiations, *e.g.*, Locarno, to ask the British Government whether there was any objection to the publication of the documents which had been received from them.

MR. MACKENZIE KING said that at present the Governor-General, who was the King's representative, was a post office, but communications did not pass through the King to Canada. He was thinking of the interest of the Crown in this matter. The mere fact that the Crown was connected with the communication of correspondence might bring the Crown into discussion. He was of opinion that the business between the Governments of Great Britain and Canada was sufficiently large to be dealt with in the same manner as was employed in the case of foreign Governments, many of which were smaller than Canada.

MR. BRUCE thought that there was not really any question of substance at issue. If the Governor-General attempted to hold up or alter any communication the matter would be different, but he was merely a post office. The question really was whether it was more convenient that communications should be sent direct or not.

MR. MACKENZIE KING said that in the old days the Governor-General went out under instructions from the Colonial Office. The status was changed, but the old methods remained, which left the impression that the Governor-General was still acting as the agent of the British Government. At present there was a danger of the Crown being brought in to the discussion, but if the British Government had its own representative in Canada and he made a mistake he could be recalled and the Crown would not be brought into it. At present the man really doing the business was the Private Secretary. The recent difficulties and troubles in Canada would never have arisen if it had not been that the Private Secretary was the real adviser of the Crown.

LORD BALFOUR said that he understood the proposal to be that, just as the Canadian Government had its High Commissioner in London so the British Government should have its High Commissioner in Canada.

MR. MACKENZIE KING said that that was his view so far as Canada was concerned, but that other Dominions might think differently. At present Canada had a High Commissioner who lived in the British Government atmosphere and could reproduce that atmosphere in his communications to the Canadian

Government. He thought that it would similarly be an advantage to the British Government if they had an English High Commissioner who could reproduce the Canadian atmosphere to them.

To-day everything had been reduced to despatches. In writing despatches much time was spent in framing the exact words, and even then they were liable to misconception. If, on the other hand, the British Government had its own representative in Ottawa, free to interpret the views of the Dominion Government in his own language, many things could be said of which no record need be kept. The despatches then would only be a record of what had actually been decided. In the case of relations with foreign nations it had been found a great advantage to get away from the written despatch to the personal interview, and he felt that the same was true of the relations of the different parts of the Empire with one another. He had in mind the establishment in the Empire of a sort of diplomatic representation such as existed in the case of the rest of the world.

MR. BRUCE thought that there were two questions mixed up which should be kept separate: (1) The question of the Governor-General and the method of communication; (2) the representation of Great Britain in the Dominions. So far as Australia was concerned, they did not consider the Governor-General as the person with whom they could discuss questions.

MR. MACKENZIE KING said that in Canada there had been occasions when the Governor-General had discussed with him questions which were causing concern to the British Government, but these questions were discussed rather in his individual capacity because there was nobody else to discuss them.

MR. BRUCE said that he had never had such an experience and he thought that these functions lay rather outside the Governor-General's province.

MR. AMERY agreed with Mr. Bruce that it would be useful to separate the two questions: (1) The question whether the channel of communication ought to be brought more into line with the general constitutional position to-day; (2) whether there was any practical advantage in the British Government having its own representatives in the major Dominions. As to (1), the present form perpetuated a state of affairs long passed away under which the Governor-General was not only the representative of the King, but also the agent and the mouthpiece of the Colonial Office. The Governor-General did not to-day in any way act on the instructions of the Dominions Office in the sense of pressing the views of His Majesty's Government on the Dominion Government. If Lord Byng drew the attention of the Canadian Ministers to certain questions, it was on his own responsibility and not on instructions. So far as he was concerned he had, since he became Secretary of State, always corresponded direct on all important matters with the Prime Minister and sent copies to the Governor-General. The present procedure was purely a survival of form. It might be interesting to recall that at the conference of 1918 Sir Robert Borden and Mr. Hughes had raised this question of communications and had hoped that all communications should go from Government to Government. This was strongly opposed by the then Secretary of State, Mr. Long, on the ground that there might be some feeling on the part of the Governors-General that their status was being impaired. A compromise was reached that the kind of questions which had been discussed with British Ministers at the conference might be discussed direct between Prime Minister and Prime Minister, and the practice had continued of using this channel of communication in all important matters. As a matter of practical convenience these communications went through the Governor-General's office because he had the cyphers, codes, &c., and the only question really was whether it was desired to extend the present system of communication between Prime Ministers.

MR. BRUCE observed that it was important to clear this matter up. There had been instances where he had sent cables direct without passing through the Governor-General. There was once an instance when the Governor-General called his attention to his not having been sent a copy.

MR. MACKENZIE KING said that there had been no instances of this kind in Canada.

LORD BALFOUR observed that there appeared to be a real difference in practice between Australia and Canada.

MR. AMERY did not think there was really a difference. The real importance of the system of communication between Prime Minister and Prime Minister lay in the fact that it insured not only that the Prime Minister saw the telegram, and that it was not dealt with purely departmentally, but also that he saw and approved the answer. The question of the channel appeared to be just a question of convenience whether it was desirable to alter the work of cyphering, &c., from the Governor-General's to the Prime Minister's office. At this end he saw no objection whatever to the change, but it was necessary to consider the feelings of the Governors-General, and as a matter of courtesy to them he would like to consult them before any resolution was passed.

MR. MACKENZIE KING observed that it was also necessary to consider the feelings of the members of Parliament in Canada.

MR. AMERY said that personally he saw no objection whatsoever to the proposed change, and he could quite understand the misunderstandings that might have arisen on occasion. He only asked that before any resolution was passed the Governors-General might be consulted.

SIR AUSTEN CHAMBERLAIN was a little anxious lest the big question involved might be lost in the discussion of questions of form. As he understood it, it was not proper nowadays to employ the Governor-General as the mouthpiece to expound the policy of the British Government, but that policy should be expounded by someone who was able to explain the views of His Majesty's Government and also able to ask for an interview with the Dominion Prime Minister if necessary. If the different parts of the Empire were to act together the great issue seemed to be not how to alter the system of communication, but how to create a proper channel which did not at present exist.

MR. MACKENZIE KING said that his idea was that His Majesty's Government should have a representative who could communicate confidentially the views of the British Government to the Dominion Government.

LORD BALFOUR understood that in the old system a Governor-General was used as a channel of argument by the Home Government, and that this had now been abandoned in substance but remained in form.

MR. MACKENZIE KING said that the position was that he had ceased to be the agent but remained the channel of communication.

LORD BALFOUR asked Mr. Mackenzie King whether he wanted something that would correspond to a High Commissioner?

MR. MACKENZIE KING said that they were not pressing it so much from their side as because at present the Home Government's views were not getting across as they should like to have them presented.

MR. COATES desired to make a suggestion. As he understood it the idea was to set up an organisation which would improve the method of consultation by which the Dominions Governments should get more direct information. Could it not be done by linking up the Prime Ministers' officers, by having liaison officers from the Dominions in the Cabinet Office here and *vice versâ?*

LORD BALFOUR enquired whether the practice need be the same for all.

MR. COATES thought that, whatever was done in one Dominion, the others would have to follow suit.

SIR AUSTEN CHAMBERLAIN observed that it seemed to him that at either end there was a gap. There was no one in Canada whom the Prime Minister could send for to ask for explanations or who could, on instructions from here, give explanations as to some despatch or telegram. The Governor-General, who used to do it, now no longer did it. But here also there was no one to discharge a similar function. He thought that it was necessary to improve the liaison not only in Canada, but also here. It was desirable that Dominion Governments should appoint as their representatives here persons in possession of their mind.

GENERAL HERTZOG agreed with Mr. Mackenzie King. He fully agreed that the Dominions ought to have someone here with more diplomatic status than their High Commissioners had. It was essential that the Governor-General's position as representing the King should be kept separate from his position as representative of the Government in London.

MR. BRUCE said that there were three questions:—

1. The question of the channel of communication.

As to this, it would be quite easy to remove the staff from the Governor-General's office to the Prime Minister's office, from which all communications could go, copies being sent to the Governor-General. There appeared to be no difficulty about this.

2. The question whether there should be any representative of His Majesty's Government in the Dominions?

At present, Dominion Governments got no views except by despatches. He thought that there would be an enormous advantage in having someone directly representing His Majesty's Government.

3. The question of Dominion representation here.

This could be dealt with later.

MR. MACKENZIE KING said that it was an anomaly and an absurdity that there was no representative of His Majesty's Government in Canada.

MR. AMERY observed that the Governments of the British Empire were attempting to do by despatch and telegram what no two foreign Governments attempted to do. However carefully worded, there was no safeguard against a serious misunderstanding arising from written or cabled despatches. He thought that it was important that such communications should be supplemented by a personal interchange of views. There was at present nobody who could talk on behalf of Great Britain to Canada, or *vice versâ*, as the French Ambassador talks to the Foreign Secretary. Personally, he hoped that it would be possible to rectify that.

SIR AUSTEN CHAMBERLAIN said that it appeared Mr. Mackenzie King, Mr. Bruce and General Hertzog would all like to have established in their countries a representative of the Government of Great Britain. Was it right to think that the other Dominions desired the same thing?

MR. FITZGERALD said that there were certain anomalies with regard to the position of the Governor-General which were subject to misrepresentation and which should be done away with, *e.g.*, the Governor-General was described as "The Officer Administering the Government of the Dominion." He thought that there should be representatives of the Dominions having direct access to Ministers in Great Britain, but the difficulty was not so great in the case of the Irish Free State, because they were not 12,000 miles away, as was the case with some of the other Dominions.

LORD BALFOUR thought that the discussion had been carried as far as it could be carried that day. He would naturally wish to inform the Prime Minister and his Cabinet colleagues before the matter was carried further. He gathered that the general view was that the employment of the Governor-General as the mouthpiece of the British Government had become obsolete, and that the duties of the representative of the Crown ought not to be mixed up with those of the representative of the British Government. The present system was apt to give rise to misunderstandings of a mischievous character. He thought that there should be no difficulty in having an improved method of intercommunication which would not involve the Crown and would enable Great Britain and the Dominions to communicate with one another more adequately and freely than they did to-day. He proposed to ask his colleagues whether they agreed with this view, and, if they did, they could then proceed to give the matter a second reading.

MR. COATES desired to make it clear, on behalf of New Zealand, that they would prefer to keep the existing system of communication and to see a linking-up of the Prime Ministers' departments. It would be a mistake, in his view, to do anything to diminish the dignity or the status of the Governor-General.

MR. AMERY said that Mr. Coates had made a very interesting suggestion, somewhat different in form from that of Mr. Mackenzie King, but not necessarily incompatible with it.

LORD BALFOUR said that it was quite evident that the application of the general principle would have to be worked out, having regard to the circumstances of each separate Dominion.

MR. BRUCE enquired whether Lord Balfour included in the general principle the question of access of the Dominion High Commissioners to British Ministers?

LORD BALFOUR thought that to be a matter of method which it was not necessary to study to-day.

MR. AMERY thought that the question of access need not create any difficulty, certainly not any *amour-propre* on the part of the Dominions Office. There was already access on the part of the High Commissioners to the various Government Departments when they wanted to get down to business, but they naturally as a matter of convenience came to his office in the first instance because they regarded it as their advocate and not merely a liaison and also because there was generally a history to these matters which the Dominions Office alone could supply, with the consequence that if they approached another Department first that Department would probably delay till it had consulted the Dominions Office. In foreign affairs the High Commissioners were already in the closest touch with the Foreign Secretary when they were at Geneva. There was really to his mind no important constitutional point involved.

MR. COATES said that there was the important question whether a High Commissioner should deal with foreign affairs and whether he should act as the medium of communication with his Prime Minister in matters of the utmost delicacy and secrecy.

MR. MONROE agreed with the position of New Zealand, and said that they were content in New Zealand with the present arrangements.

MR. COATES said that they would like closer liaison between Governments.

MR. BRUCE stated that the High Commissioner was the representative of the Dominion Government, and how much authority he was entrusted with was a matter for the Government of the day in the Dominion to decide.

SIR AUSTEN CHAMBERLAIN said that some suggestions had already been made as regards the relations of the self-governing parts of the Empire with foreign Powers. Some were mere matters of form, but some were matters of great importance in the foreign relations of the Empire. Of the first kind was the matter of the exequaturs of consuls. He saw no difficulty in so adjusting the practice as to arrange that the exequaturs for foreign consuls in the Irish Free State might be countersigned by a Minister of the Irish Free State and similarly with other Dominions. But beyond this was the question of how negotiations with foreign Powers should be carried out and what should be the relationship in these matters between the various parts of the Empire. Sometimes these negotiations concerned all, sometimes one or other more actively and the rest very little or not at all. When any part of the Empire was negotiating with any foreign Power it ought to keep any other part likely to be interested fully informed. If the negotiating Government received no adverse comments or observations it might consider itself entitled to proceed. If, on the other hand, the policy involved in the negotiations was of a more serious kind, *i.e.*, if it would involve direct obligations on some other part of the Empire, the negotiating Government should carry the matter further and have a full consultation with all those concerned.

MR. MACKENZIE KING stressed that that was really the present practice.

MR. BRUCE agreed that that was how they interpreted the present position.

SIR AUSTEN CHAMBERLAIN then read the following statement:—

> "Any Government engaged in negotiations affecting foreign relations falling within its sphere must keep the other Governments likely to be interested fully informed of what it is doing. So long as it receives no adverse comments, and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its policy is generally acceptable. It must, however, before taking any steps which would involve the other Governments in any active obligations, obtain their definite assent."

MR. O'HIGGINS said that the feeling in the Free State up to the present had been that in some vague way the Dominions did not have international personality in the sense of having direct access to foreign Powers if they wished to conduct direct negotiations. For instance, invitations to international conferences came through the Foreign Office. If a Dominion tried to effect direct contact it was

liable to expose itself to a snub. In the memorandum which the Free State Government were circulating they gave instances of this state of affairs. The Free State Delegation was very glad to know that no difficulty would arise about regulating the position with regard to the exequatur of foreign consuls. They fully realised the necessity in the conduct of any foreign negotiations of keeping the British Government or any other Dominion Government interested most fully informed. Moreover, they appreciated the position of the Foreign Office in London in the present circumstances.

LORD BALFOUR observed that the present system under which the foreign affairs of the Empire were largely conducted by the Foreign Office in London was not a part of the constitutional relationship of the Empire but a mere matter of convenience.

SIR AUSTEN CHAMBERLAIN said that there was an infinite variety of negotiations; for instance, Canada and the United States of America, with their long land frontier, might want to negotiate about water-power, which only concerns them, or cattle disease or smugglers.

LORD BALFOUR observed that if it was a question of smugglers, the Government of Great Britain became interested as responsible for the West Indian Islands.

SIR AUSTEN CHAMBERLAIN said that, on the other hand, there might be negotiations which concerned all parts of the Empire.

LORD BALFOUR thought that all were agreed that there are cases in which separate negotiations were desirable. This was less likely, perhaps, in the case of Islands like Australia and New Zealand than it was in the case of Canada. There was no suggestion that at the present stage of Imperial development London must not be chiefly responsible for the conduct of foreign affairs. Subject to that qualification, if it was a qualification, he gathered that all were prepared to accept the statement of the Foreign Secretary.

SIR AUSTEN CHAMBERLAIN asked leave to mention a subject which he thought was a matter of some importance. When the protocol which was the joint work of the representatives of the various Governments of the Empire and other members of the League was considered, it was agreed by all that it was inexpedient that the different Governments of the Empire should ratify that protocol. There was some difference of opinion, however, how far they could accept the general principle of compulsory arbitration in all cases. The view of His Majesty's Government had been that situated as the British Empire was it would not be safe to accept the obligation to refer all questions to arbitration. They were prepared in all suitable individual cases to accept arbitration, and in the past the British Empire had probably undertaken to arbitrate more cases than any other foreign country, but the present proposal to refer all questions to arbitration was a different matter.

MR. LAPOINTE said that Canada was not prepared to ratify the protocol, but was in favour of considering further the principle of compulsory arbitration.

SIR AUSTEN CHAMBERLAIN said that the answer of the Canadian Government was one of the reasons why he wished to bring this question before the Committee, because a very difficult situation would arise if one Government of the Empire undertook to refer all questions to arbitration and other Governments refused to undertake that liability. He did not ask for a decision on that day, but only for permission to circulate a paper which he had prepared.

LORD BALFOUR imagined that everyone would approve of that.

2, *Whitehall Gardens, S.W.* 1,
November 4, 1926.

Printed for the Imperial Conference. November 1926.

MOST SECRET. Copy No. 6

E. (I.R.—26). 7th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MINUTES OF THE SEVENTH MEETING OF THE COMMITTEE, HELD IN THE CABINET ROOM, FOREIGN OFFICE, S.W. 1, ON THURSDAY, NOVEMBER 4, 1926. AT 3 P.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. Sir AUSTEN CHAMBERLAIN, K.G., M.P., Secretary of State for Foreign Affairs.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and the Colonies.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

The Hon. J. G. LATHAM, C.M.G., K.C., Attorney-General.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

The Hon. N. C. HAVENGA, Minister of Finance.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

The Hon. E. LAPOINTE, K.C., Minister of Justice.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

The Right Hon. Sir FRANCIS BELL, G.C.M.G., K.C., Minister without Portfolio.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

Mr. DESMOND FITZGERALD, T.D., Minister for External Affairs.

Mr. P. McGILLIGAN, T.D., Minister for Industry and Commerce.

Mr. J. COSTELLO, K.C., Attorney-General.

Newfoundland.

The Hon. W. S. MONROE, Prime Minister.
The Hon. A. B. MORINE, K.C., Minister without Portfolio.

The following were also present:

Great Britain.

Sir WILLIAM G. TYRRELL, G.C.M.G., K.C.V.O., C.B., Permanent Under-Secretary of State for Foreign Affairs.

Canada.

Dr. O. D. SKELTON, Deputy Minister for External Affairs.

New Zealand.

Mr. F. D. THOMSON, C.M.G., Clerk of the Executive Council.

Irish Free State.

Mr. E. J. SMYTH, Principal Officer, Department of Industry and Commerce.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*
Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee.*

Mr. P. A. KOPPEL, C.B.E. (Foreign Office)
Mr. C. W. DIXON, O.B.E. (Dominions Office)
Mr. JEAN DÉSY (Canadian Delegation)
} *Joint Assistant Secretaries to the Committee.*

LORD BALFOUR asked Mr. Lapointe to make a statement as to the Treaty of Locarno on behalf of Canada.

MR. LAPOINTE made the following statement:—

"We have not been able to conclude that we should adhere, under the optional clause, now that the Treaty of Locarno has been definitely concluded and ratified.

"The Treaty involves additional obligations in a European field which, while of interest to us as to all the world, is not our primary concern.

"This view is consistent with our previous attitude on Article 10 of the Covenant and the Protocol of Geneva, of which Locarno has been called the posthumous child.

"It is apparently also in harmony with the decision of the Government of Great Britain not to accept additional obligations on the eastern boundary of Germany, as more remote and indirectly of concern than the western boundary situation.

"The possibility of each part of the Empire deciding its course freely was, of course, contemplated by the inclusion of the optional clause as to Dominion signature and by the decision of the British Government to sign in any case.

"It may be urged that difficulties will arise if one part of the Empire should be at war and others not, and that we should, therefore, adhere to the Treaty to avoid this difficulty.

"This is a real difficulty, but not a new one, and not raised by the Treaty alone.

"If we do not sign, the question remains as it was, to be settled as occasion arises in the light of the conditions and needs of that day, and in full regard of our obligations as a member of the British Commonwealth and of the League of Nations.

"I have also noted the view that adherence now by the Dominions would make it less likely that we would be involved in war, by deterring any aggressor from facing what would be overwhelming odds. There is some force in that, but it might perhaps be urged in connection with most military alliances. In any case, we would have to consider whether the additional security for Continental Europe thus provided would not be more than offset by the danger to Canadian unity and progress involved in the assumption of fresh burdens when our neighbours to the south have not assumed even those which we already have in the League.

"We regret not to be able in our present light to adhere to the Treaty, but such action is in no way due to lack of appreciation of the motives which decided the British Government to carry it through, and of the spirit which has animated its conduct of international affairs since Locarno."

MR. MACKENZIE KING added that the fact that the United States had not assumed any obligations in European affairs placed the Canadian Government in a somewhat difficult position.

MR. BRUCE stated that in the Commonwealth Parliament he had said that the Commonwealth Government viewed with gratification that great progressive step forward; they had been kept informed of negotiations and were entirely in accord with what had been done, but he would not ask the Commonwealth Parliament to take action until after the Imperial Conference. The question arose whether it was desirable that some parts of the Empire should adhere and others should not: or

whether all parts should not take the same course. The only difference involved in adhesion to the Treaty was that if the Commonwealth adhered and from the Treaty there arose some necessity to take action of a minor character, there would be a moral obligation on the Commonwealth to take such action. If the Commonwealth had not adhered, such action might be left to Great Britain. But if the situation which arose were similar to that of 1914, the question whether the Commonwealth had or had not adhered would not make any difference. In a life and death struggle Australia would participate. At the moment he wished to hear the general view of those present, and subsequently the Commonwealth Government would advise their Parliament what course to pursue. If the general view was that these treaties were of great importance and that the prestige of Great Britain would be helped by the Dominions coming in, he would certainly agree, but the adoption by different parts of the Empire of different courses of action would suggest to foreign Powers that there was a difference of opinion.

MR. COATES stated that New Zealand was very much concerned as to becoming responsible for obligations to which she might find it difficult to give effect. New Zealand asked for full consultation; she had had every opportunity of expressing her views, and had expressed them as negotiations progressed. New Zealand was anxious to help in a small way to bring about a stabilised position and to help in the direction of peace. The Treaty was, in fact, a Treaty of Peace, and not so much in the interest of New Zealand, of the Empire, or of Great Britain, as of the world as a whole.

If Great Britain were threatened New Zealand was also threatened. When all the Dominions had expressed their views, New Zealand would leave it to the Foreign Secretary of His Majesty's Government to use his judgment as to the action to be taken. The New Zealand Government had not asked their Parliament to take any action in regard to the Locarno Treaty, but he, personally, thought that there was no doubt that, if they were asked to approve adhesion, they would do so. New Zealand was closely wrapped up in the welfare of His Majesty's Government, particularly as they offered protection and means of security, and there was no doubt that if a situation similar to that of 1914 were repeated, New Zealand would be found beside the Mother Country, and the position would, he thought, be similar if any other part of the Empire were threatened.

GENERAL HERTZOG said that he had informed the Union Parliament that he did not feel justified in expressing an opinion as to adhesion to the Treaty at the moment, because he first wished to hear from the Government in London why it should be necessary for the Dominions to subscribe to the Treaty. The Union should not enter more deeply into matters concerning Europe and Great Britain, unless cause were shown. Each part of the Empire had matters affecting it more or less particularly. The question arose how far cause had been shown for South Africa, by subscribing to the Treaty, to assume greater obligations than those involved under the Covenant of the League. All members of the League had to perform the obligations of the Covenant; but the Treaty of Locarno would involve greater obligations upon the parts of the Empire participating in it. So far as the obligations of the Treaty were concerned, all the Dominions were greatly indebted to Sir Austen Chamberlain for bringing about a state of security which would help France and Germany to put aside anxiety and to look at matters in a more business-like way. Would the participation of the Dominions in the Treaty add to that sense of security? France and Germany knew that, if the contingency arose, South Africa would act no less effectively than if she had adhered to the Treaty. Assuming that Great Britain had taken action in support of Germany under the Treaty, and the Council of the League gave a decision against Germany, Great Britain would have to withdraw support of Germany; the position would be less embarrassing to the Empire if the Dominions were not similarly involved. Would it not be better if the Dominions were to stand waiting for the proper moment to intervene? He agreed with Mr. Bruce that it would be undesirable that some parts of the Empire should participate and others should not, as this would leave an impression of division. Unless good cause were shown for the participation of the Union, it would be better if the Union were left out and action under the Treaty left to Great Britain, there being the ultimate assurance of the Covenant of the League that the Empire would stand by her. South Africa was in much the same position as Canada, though special circumstances resulting from the neighbourhood of the United States did not arise in her case.

MR. MACKENZIE KING explained that what he had in his mind when he made his previous remark was the difficulty of holding the Canadian people down and attracting immigrants to Canada, when in the United States there was this feeling of getting away from entanglements in Europe.

GENERAL HERTZOG said that the view was common in South Africa that the Union should be entangled as little as possible in European questions. If it adhered to the Locarno Treaty not only would they mix themselves up with these questions at once but they would create a feeling unfavourable to the sentiments which would make them stand together with Great Britain when the necessity arose. He thought it was better for ultimate co-operation if they did not ask the Union Parliament to accept the obligations of the Treaty.

MR. O'HIGGINS said that he was not authorised to express the opinion of his Government either in favour of or against adhesion. They would like to consider the matter further. Sir Austen Chamberlain had stated in the House of Commons in November 1925 that it was not possible to discuss such questions by telegram or despatch. He did not think that if such consultation had taken place it would have been possible to improve on what had been done. The admiration of the Irish Free State Government for the policy and action of Sir Austen Chamberlain had been expressed by Mr. Fitzgerald in the Dail. He pointed out that Article 9 of the Treaty implied that without such a provision the Dominions would have been bound even in the absence of Dominion negotiators and signatories. Would the adherence of the Irish Free State Government tend to strengthen the pact? The Free State Government were modest enough to think not. Under the present position, if His Majesty on the advice of his Government in Great Britain declared war, technically the Free State were at war and the enemy could attack them. If this view were right, adhesion to the pact would carry with it the obligation to be at war not only technically but offensively. Critics of the Irish Free State Government might argue that adhesion would carry with it the obligation to send an expeditionary force to the continent, and such criticism would be very undesirable politically. The Free State were in a very demilitarised condition, the army having been reduced from 50,000 to 12,000, so that the adhesion of the Irish Free State was not likely to prove very effective. The Free State representatives were not authorised to express any definite opinion as to adhesion, but the trend of their collective minds was in the negative direction.

MR. MONROE said that he thought it was safer for all parts of the Empire to show a united front. It was safer to adhere than not to do so, and he intended to ask the Legislature of Newfoundland to adhere.

SIR AUSTEN CHAMBERLAIN said that all the Dominion representatives present had shown approval of the steps taken, the policy pursued by His Majesty's Government and the methods by which they had secured the object desired by all—the preservation of peace and the avoidance of a disaster such as that of 1914. This had given great satisfaction both to him and to his colleagues. His Majesty's Government would have liked to have personal conference with the Dominions at an earlier stage. When they suggested an earlier meeting of the Imperial Conference to consider the questions connected with the Protocol, one of their main objects was to arrive at a common decision as to a substitute for the Protocol. It was unnecessary for him to insist on the object of His Majesty's Government or enter into the situation which had confronted them. His profound conviction was and had been that unless it had been possible rapidly to change existing conditions in Europe, the opportunity would have been lost, and the countries would have hardened into two camps. There had been two alternatives: either to welcome Germany back into the comity of nations, or to allow her to build up counter-alliances with Russia and other available Powers, which would have confronted the League of Nations with another League possessing equal or almost equal material force. Rapid action had been necessary in order that the younger generation might grow up in a different spirit. Consequently, when the proposed special meeting of the Imperial Conference had proved impossible, it had been necessary for Great Britain to act for her own safety, that of the Empire and of the world. In so acting His Majesty's Government had hardly taken any additional obligations, but had defined how, in particular circumstances, they would interpret the Covenant. Under the Covenant, in certain circumstances, the Council could call on members of the League to supply military forces, but it was reserved to each Government to decide how far each should contribute. Economic sanctions, on the other hand, were directed by the Council, and

there was an obligation on each member to contribute its share. These obligations bore quite a different aspect from that originally contemplated owing to the abstention from the League of the second greatest naval Power in the world, the United States. Consequently, all parts of the Empire were deeply committed by the Covenant in the event of European disturbance, though there was no commitment to send any soldiers to fight in such an event. By the Treaty of Locarno His Majesty's Government had undertaken, if the emergency arose in a particular area, to go to the assistance of the party attacked with all their strength. Mr. O'Higgins had referred to Article 9 of the Treaty. The position, as he understood it, was that the contracting party to the treaty was H.M. the King, and it was His Majesty who gave the undertaking of assistance; Article 9 was necessary in order to define the extent of the assistance which His Majesty would furnish.

The Dominions representatives had approved generally the policy and action of His Majesty's Government, but had asked whether it was necessary for the success of this policy that the Dominions should adhere. The attitude of the Government in London necessarily differed from that of the Governments of other parts of the Empire. It was axiomatic in Great Britain that if the safety of a Dominion were at stake the whole resources of Great Britain would be placed at its disposal. The greater the guarantee that the Dominions would act with Great Britain the greater was the peril to any Power which brought down upon itself the sanctions. If France or Germany were the aggressor, not only would they find their neighbour against them, but they would also have the whole strength of Great Britain against them, and if there were the same guarantee as to other Dominions it would be a still more formidable restraint against any aggressive tendencies in any particular country. If they asked whether any serious consequences would follow from the Dominions not adhering, he would say no. He thought that people at large would think it was almost certain that in a great crisis the Empire would act together. Unanimous adherence, however, would produce a great effect, if it was felt that the whole weight of the British Empire was to be used to prevent aggression.

With regard to the demilitarised zone, under the Treaty of Versailles, any act against the demilitarisation provisions gave the parties a right of going to war. Under the Locarno Treaty it had been provided that such cases should go to arbitratior and only one case was taken out of that, the case of an assembly of armed forces in the demilitarised zone. Such an assembly could only have one purpose, and the object of providing a demilitarised zone would be lost. Consequently, there was little difference between the obligations under the Treaty of Locarno and those under the Covenant, though there was greater precision in the former as to those obligations. He would have been glad if the whole Empire, feeling that the obligation was so little more than that previously undertaken, and of a nature so little likely to mature, could have unanimously agreed to adhere. If all parts of the Empire were not prepared to take this action he was disposed to agree with those who thought that unanimity was important and that it was better that none should adhere.

GENERAL HERTZOG wondered whether there might be a risk if it were thought that Great Britain would in any case support any Dominions which became involved in war.

MR. AMERY said that, if consultation proceeded on the lines discussed at the previous meeting of the Committee, no part of the Empire was likely to drift into war without being aware how far it had behind it the opinion of the rest of the Empire.

MR. BRUCE felt very keenly that there should be common action. While they all felt that the Dominions could not be expected to ratify every treaty entered into by Great Britain, this Treaty of Locarno had done so much towards that peace that they all desired that he would prefer to go and ask his Parliament to agree to adhesion. If the Dominions did not take such action, it appeared to him that they were failing to fulfil the obligations involved in the conception of equality of status.

SIR AUSTEN CHAMBERLAIN agreed that nothing could better emphasise the independent status of the Dominions than if each Dominion separately ratified.

MR. MACKENZIE KING alluded to Mr. Meighen's declaration that he was not in favour of Canada participating actively in war until there had been a general election as one of the circumstances likely to lead to difficulty in inducing the Canadian Parliament to approve adhesion.

LORD BALFOUR said he gathered that Canada would in no circumstances be able to adhere.

MR. MACKENZIE KING said he was afraid that it would be impossible to induce Parliament to approve adhesion.

MR. COATES suggested that a general resolution on the subject should be put before the Committee.

LORD BALFOUR said that there appeared to be three possible courses :—

1. Unanimous adhesion.
2. General approval by the Dominions of the course adopted by His Majesty's Government, without adhesion.
3. No action whatever.

He personally thought that there was much to be said for the second course. The future management of foreign policy would be easier if there were approval of policy after consultation, rather than Parliamentary debates in seven Parliaments. He asked Sir Austen Chamberlain what would be the effect on foreign countries of the adoption of the second course which he had mentioned.

SIR AUSTEN CHAMBERLAIN thought that what would be most impressive would be ratification by each independent Government of the Empire. This being impossible, a declaration of approval by the Imperial Conference of the action of His Majesty's Government would have the greatest effect.

After some discussion as to the possible wording of a resolution, MR. MACKENZIE KING said that he was much impressed by Lord Grey's recent statement that it was a mistake for the Dominions to go in for anything half-heartedly. Canada was satisfied with the Treaty and with all its terms; there was no question at all of that; and if the situation arose Canada would do her part. But was it wise to open up in the Canadian Parliament a debate as to whether Canada had approved or not?

After further debate, it was agreed that, in the light of the discussion at the meeting, a draft resolution should be prepared and should be submitted to the Committee.

Adherence of the United States to the Protocol establishing the Permanent Court of International Justice.

There was some discussion on the question of the adherence of the United States to the Protocol establishing the Permanent Court of International Justice (Paper E. 116). It was understood that it was the intention of the Dominion Governments to reply to the United States Government on the lines of the draft letter circulated by the Secretary-General of the League of Nations (Annex C to E. 116), and that it was, therefore, unnecessary that the matter should be further considered by the Committee.

2, *Whitehall Gardens, S.W.* 1,
November 4, **1926.**

Printed for the Imperial Conference. November 1926.

MOST SECRET. **Copy No. 6**

E. (I.R.—26). 8th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MINUTES OF THE EIGHTH MEETING OF THE COMMITTEE, HELD IN THE CABINET ROOM, FOREIGN OFFICE, S.W. 1, ON MONDAY, NOVEMBER 8, 1926, AT 11 A.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. Sir AUSTEN CHAMBERLAIN, K.G., M.P., Secretary of State for Foreign Affairs.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and the Colonies.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

The Hon. N. C. HAVENGA, Minister of Finance.

Newfoundland.

The Hon. W. S. MONROE, Prime Minister.

The Hon. A. B. MORINE, K.C., Minister without Portfolio.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

The Hon. E. LAPOINTE, K.C., Minister of Justice.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

The Right Hon. Sir FRANCIS BELL, G.C.M.G., K.C., Minister without Portfolio.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

Mr. DESMOND FITZGERALD, T.D., Minister for External Affairs.

Mr. P. McGILLIGAN, T.D., Minister for Industry and Commerce.

Mr. J. COSTELLO, K.C., Attorney-General.

India.

The MAHARAJA OF BURDWAN, G.C.I.E., K.C.S.I., I.O.M.

Mr. D. T. CHADWICK, C.S.I., C.I.E., Secretary to the Government of India, Commerce Department.

The following were also present:

Great Britain.

Sir WILLIAM G. TYRRELL, G.C.M.G., K.C.V.O., C.B., Permanent Under-Secretary of State for Foreign Affairs.

Canada.

Dr. O. D. SKELTON, Deputy Minister for External Affairs.

New Zealand.

Mr. F. D. THOMSON, C.M.G., Clerk of the Executive Council.

Union of South Africa.

Mr. D. STEYN, Private Secretary to the Prime Minister.

Irish Free State.

Mr. J. P. WALSHE, Secretary of the Department of External Affairs.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*

Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee.*

Mr. P. A. KOPPEL, C.B.E. (Foreign Office)
Mr. C. W. DIXON, O.B.E., (Dominions Office)
Mr. JEAN DÉSY (Canadian Delegation)
} *Joint Assistant Secretaries to the Committee.*

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1. TREATY OF LOCARNO.

LORD BALFOUR said that a draft resolution had been circulated embodying the general views of the Committee; but he understood that Mr. Mackenzie King had a form which he preferred.

MR. MACKENZIE KING then put forward the following draft resolution:—

"The Conference has heard with satisfaction the statement of the Secretary of State for Foreign Affairs with regard to the efforts made to ensure peace in Europe, culminating in the agreements of Locarno; and congratulates His Majesty's Government in Great Britain on its share in this successful contribution towards the promotion of the peace of the world."

THE COMMITTEE agreed to recommend the new draft to the Conference for adoption.

2. SYSTEM OF COMMUNICATION AND CONSULTATION.

Position of High Commissioners in London.

MR. BRUCE said that, as far as Australia was concerned, she had been interested in this question for a long time. It was essential for Australia that she should be kept fully informed with regard to the action and policy of the British Government in regard to foreign affairs. Communications had greatly improved lately, and the British Government had shown themselves ready to keep the Dominions informed. It was necessary that the Foreign Office should know what documents the Australian Government wished to see. He had discussed with Lord Curzon and Mr. Ramsay MacDonald what could be usefully done in order to improve matters. As a result he sent an officer over, and he had been given the greatest possible assistance. He had, for instance, been given information as to the back history of the events mentioned in the Foreign Secretary's statement the other day. In the Dominions public opinion had no knowledge whatever as to foreign affairs, or the policy of Great Britain. The Commonwealth Government having now got the past history, were in a position to inform the press. There were two sides to this question: (*a*) That the Dominion Governments should be kept fully informed with regard to the confidential side of foreign affairs; and (*b*) that the public should be kept generally informed. He doubted whether the present system carried out (*b*); but that was a matter for the Dominions themselves. At the Imperial Conferences they were able to discuss matters, but they then returned to their countries; policy might change, but not sufficiently for consultation; yet the definite change might come suddenly and thus come as a shock. A confidential man with access to the Foreign Office could watch the gradual change and report it as it came. The Australian Government thought that the High Commissioners might have the right

of access to Ministers in Great Britain; it would depend on the sort of people they sent as High Commissioners whether the Dominion Governments would get the necessary information as to the trend of affairs. He suggested that the High Commissioners should be the unofficial channel and should (1) be entitled to see confidential communications; (2) should be entitled to have access to Ministers; and (3) should be used by the Dominion Governments to give the unofficial views of their Governments. These views could not be set out in official despatches, which must be carefully drafted in view of possible future publication. He thought that these duties could be carried out by the High Commissioners, as liaison officers must necessarily be juniors. The Australian system of a liaison officer worked well, but he thought it should be a senior representative who carried it out. The question of representatives of Great Britain in the Dominions was a matter for Ministers here.

The other point raised by Mr. Coates in his memorandum had been a proposal for something in the nature of a secretariat. As to foreign affairs, his view was that if a representative, such as he had described, were appointed, he should be assisted by a junior responsible officer, who could do the spade work for the High Commissioner, which in itself would be a very considerable task. This was quite distinct from the proposal for a secretariat. He was in favour of such a proposal, but would not press it; and as regards foreign affairs he was confident that this should be regarded as outside its scope. He would prefer a secretariat to deal with economic matters.

MR. MACKENZIE KING said that he agreed with Mr. Bruce's views as to the position of the High Commissioner as an unofficial channel of communication, with the right of approach to Ministers in Great Britain, and assisted by the necessary staff.

LORD BALFOUR, having raised the question as to possible publication of communications between High Commissioners and their Government if they were regarded in an analogous position to that of Ambassadors, SIR AUSTEN CHAMBERLAIN said that, as regards foreign affairs, there were two classes of communications with Ambassadors—(*a*) formal despatches from him to His Majesty's Ambassador in a foreign country regarding conversations with foreign Ambassadors in London, and despatches from His Majesty's Ambassador regarding conversations with foreign Ministers; and (*b*) private correspondence between himself and His Majesty's Ambassadors. The former class of communication would not be published without the consent of the foreign Government concerned; the latter would in no circumstances be published. He presumed that Mr. Bruce had in mind communications of the latter category.

MR. BRUCE said that the point was that the High Commissioner should be in such a position towards his Prime Minister that he could send him unofficial information.

LORD BALFOUR said that a High Commissioner analogous to an Ambassador would have to deal with the whole policy of the British Empire. The proposal would greatly increase the work of the Foreign Secretary.

MR. BRUCE pointed out that a foreign Ambassador, while he would discuss with the Foreign Secretary questions affecting only his country and Great Britain, would also probably communicate to his own Government his impressions of the atmosphere on all matters of foreign policy.

MR. AMERY thought that Mr. Bruce's experiment of Major Casey as a liaison officer had been most valuable; but he felt that it had stopped short of its full utility owing to Major Casey being a junior. If a senior had the help of a junior, he would have no difficulty in dealing with the necessary questions. He believed it would be useful not as displacing the system of official correspondence between Governments, but as supplementing it. The whole field of co-operation of the British Empire was a wide field of contacts, and it did not seem desirable that one particular matter, namely, foreign affairs, should be excluded from the duties of the High Commissioner. The High Commissioner should not be debarred from any information whatever.

MR. BRUCE said he was not suggesting anything new or revolutionary. The appointment of a liaison officer had resulted in much better contact with the British Government, but there was a danger that this system might undermine the position of the High Commissioner.

MR. FITZGERALD said if the liaison officer were in the same position as a counsellor or first secretary is to an Ambassador, such undermining would not take place.

MR. COATES raised the question whether an arrangement providing for consultation through the High Commissioners would not in practice amount to a continuous sitting of the Imperial Conference without the presence of the Prime Ministers.

He did not think that a Government would always want information on foreign affairs to be obtained through its High Commissioner. High Commissioners were appointed for a term of years, and there might be a change of Government in the meantime. He saw great difficulty in the transmission of most secret and controversial information through an official whose opinions might be totally opposed to those of the Government in office and who would naturally and perhaps unwittingly colour his information in accordance with his own views.

Again, though they had absolute confidence in the High Commissioners, he was not sure that they had been sufficiently trained in secrecy and confidential work to deal with a Government which had not appointed them.

As High Commissioners must necessarily be appointed for a lengthy term he thought it desirable to call attention to these objections.

He was of opinion that all the Dominions must adopt the same course for the reason that no Dominion could allow its High Commissioner to be in a worse position than those of other Dominions.

LORD BALFOUR asked whether Mr. Coates held Mr. Bruce's idea that each Dominion should make its own arrangements to be impracticable.

MR. COATES repeated that no Dominion was going to allow its High Commissioner to be in an inferior position. He said he was opposed to any interference with the present system of communication through the Secretary of State for Dominion Affairs and the Governor-General: for example, by diverting all correspondence through the High Commissioner.

MR. AMERY said that there was no question of setting up a new channel of official correspondence.

MR. COATES said the question was whether all information should pass through the High Commissioner's Office, thus increasing the status of an official who might not be entirely in accord with the views of the Government in office.

MR. MORINE asked whether it would not be possible, not to lay down any general rule, but for the Prime Minister to authorise the High Commissioner, or anybody else, to communicate unofficially with the Government of Great Britain.

SIR AUSTEN CHAMBERLAIN said the problem was whether it was possible to do anything on the side of Great Britain to meet the wishes expressed by some of the Dominions and, in particular, to make the causes and process of foreign policy to be more clearly known to the Dominions. To begin with conduct of affairs in the Foreign Office—the mass of matter which came in was far greater than any one individual could read and digest. A great deal of routine work was done in the Office which did not come to him at all. Then to pass to larger questions —he circulated to the Cabinet the documents which he thought of importance, in order to aid them in forming their judgment on foreign affairs and to enable them at any moment to control his actions. There was less discussion on foreign affairs nowadays in the Cabinet than when he joined his first Cabinet twenty years ago, and this was owing to the increase of general business. But the members of the Cabinet had the right at any moment to challenge anything he might do. The same documents which went to the British Cabinet went to the Dominions, and they could similarly form their judgments. But such documents would reach the Dominions late, and the Dominion Prime Ministers had not the same opportunity of asking questions as Cabinet Ministers in Great Britain. If he could help to approximate the position of Dominion Prime Ministers to that of Cabinet Ministers in Great Britain, he would be only too glad to do so. He did not wish to suggest that the Dominions Office should be done away with. Even if the Dominions did not require it, it would be required by the Government in London. He agreed with those who desired that the present methods of sending telegrams and despatches should continue, but in between Imperial Conferences the Dominions did not receive the political atmosphere, and he thought that if the Dominions had a body of

representatives here, who could keep in touch with the Foreign Secretary, they would preserve the atmosphere, and they would help to give life to dead print. These men, however, must be well-informed and in the confidence of their Governments.

They must be men who could be relied to keep confidential information. If such a body existed here, he would arrange to have periodical meetings with them at which he could point out new developments and new difficulties, and how they were going to be met. If any Government had any question which they wished to put, their representative could raise it. He had dwelt on the proposal that there should be a body of Dominion representatives. He would be very glad to give to any individual the same access to information as was given to Mr. Bruce's representative, but having regard to the pressure upon his time, due to giving interviews to foreign representatives, he would prefer dealing with a body of representatives rather than with several representatives individually. Whether the Dominions wanted to have officers of this kind, and what position they should hold, was a matter for them to decide. All that the British Government could say was that if they wished to appoint confidential officers, they would meet those officers and help them.

GENERAL HERTZOG stated that the Union Government agreed that there was a necessity for closer contact between the High Commissioner and the Government in Great Britain. If the High Commissioner communicated with his Government, he would be in the best position to know what subjects would interest his Government, and he could mention matters which could not very well be dealt with in official communications from the British Government. As to Mr. Coates's remark as to the High Commissioner not being in touch with the Government of his Dominion, he thought that if such a contingency arose the Union Government would be in a position to deal with it. They would like the High Commissioner for the Union to be placed in a position to do what was required.

MR. MACKENZIE KING said he would much prefer to get information from a British official in Canada. He would rather that Sir Austen Chamberlain should communicate with his officer in Canada, than that Sir Austen should communicate with a Canadian officer here, whether as regards the communication of information by the British Government to the Dominion Governments, or as regards the method by which the Foreign Secretary in London could ascertain the views of the Dominion Governments on any particular matter of foreign affairs.

SIR AUSTEN CHAMBERLAIN pointed out that, whatever happened, it was proposed that all information which now went should continue to be sent.

MR AMERY thought that, in order to create the right atmosphere, the more channels of information there were, the better.

LORD BALFOUR said they were all agreed that existing transmission of information should continue as at present. The question was how it was to be supplemented. He gathered that the plan was that there should be a British representative in each Dominion, and a representative of each Dominion in London. If, by any chance, a representative were more efficient, either here or there, it would be that channel which would in effect be employed.

SIR AUSTEN CHAMBERLAIN pointed out that the position in different countries varied widely in accordance with the personality of the representatives.

MR. FITZGERALD said that the Free State Government were interested in all matters of foreign policy, but did not wish to be held responsible for all action taken by the British Government, in foreign affairs. He thought that the position might be defined in the following terms :—

1. The High Commissioners should be given all the privileges of approach to Ministers (or their authorised representatives *ad hoc*) possessed by a Minister plenipotentiary.
2. They should be supplied with all documents sent direct between the two Governments.
3. Their chief business would be to explain and receive explanations.
4. The work suggested for a liaison officer would more naturally be undertaken by a competent secretary or counsellor attached to the High Commissioner's office.

5. Each High Commissioner should chiefly endeavour to find out to what extent his own Government might be interested in any particular line of policy so that the Dominion might be able to secure full representation in any deliberations provoked by the risk of war or other serious international crisis.

He thought that the difficulty mentioned by Mr. Coates might be met by the appointment as High Commissioner either of a political officer changing with the change of Government, or of a civil servant.

MR. BRUCE pointed out that his idea had not been that they should adopt any formal resolution; he had only wished to clear his own mind on the subject. He only thought it necessary that the Prime Ministers should be allowed to appoint someone who should have access to confidential documents.

LORD BALFOUR then read the following formula drafted by Sir Maurice Hankey as summing up the discussions which had taken place :—

" The Governments represented at the Imperial Conference are agreed that it is desirable to improve as far as possible the facilities for intercommunication and the reciprocal supply of information in foreign affairs, particularly by developing a system of personal contact. In this connection the representatives of the Dominions welcome the offer of His Majesty's Government in Great Britain to give full information in regard to foreign affairs, and to discuss foreign affairs, with any person representing a Dominion (whether a Minister, High Commissioner, Liaison Officer, or other official) who may be nominated by his Government for either or both purposes;

" Any arrangements adopted in pursuance of this plan will be supplementary to, and not in replacement of, the system of direct communication from Government to Government, and the special arrangements which have been in force since 1918 for communications between Prime Ministers;

" The methods of supply of information, and of discussion as between the Secretary of State for Foreign Affairs and any representatives nominated by the several Dominions, will be arranged with due regard to the great and continuous pressure of work in the Foreign Office " ;

and it was decided that this formula should be circulated before any further action was taken.

MR. CHADWICK pointed out that the position of India was different from that of the Dominions, in that any formula relating to the Dominions would not be applicable to India.

LORD BALFOUR agreed that this was clearly a matter which concerned the Dominions, and not India.

MR. BRUCE stated that no one wished to throw additional burdens on the Foreign Secretary, and he thought that the proposal would not do so if the proper man was appointed. Such a man would only worry the Foreign Secretary on special occasions, and he thought it would be better not to arrange to have any regular meetings of the body of High Commissioners.

SIR AUSTEN CHAMBERLAIN said the weight of foreign affairs at present rested necessarily chiefly on His Majesty's Government in Great Britain, but there were occasions, like in the negotiations leading to Locarno, when he believed, if a body such as had been suggested had existed, it would have been possible to communicate the atmosphere during such negotiations. He only contemplated discussions with such a body on major issues of foreign affairs, and not the day-to-day work of the Foreign Office—as an instance, he mentioned the situation in China. He was in the hands of the representatives of the Dominions as to whether periodical meetings should be held.

MR. BRUCE said he did not wish that it should be thought discourteous if regular meetings were not held.

MR. AMERY said that, as regards matters other than foreign affairs, he held informal meetings weekly with the High Commissioners, which gave an opportunity for the raising of particular questions, if this were desired.

MR. COATES then dealt with the second part of the proposals in his memorandum. The Dominions would not go far until they had built up a service. He also

referred to the possibility of recruiting Dominion candidates for the diplomatic service.

SIR AUSTEN CHAMBERLAIN pointed out that there were already Dominion-born officers in the diplomatic and consular services. The difficulty was that the examinations must be held in London. It was necessary to come to Europe in order to obtain sufficient proficiency in languages; and if they came to Europe for this purpose, there was no difficulty in sitting for the examination here. Knowledge of languages was essential, and could only be obtained by residence in foreign countries. If any Dominion Government liked to second any civil servant for service in the Foreign Office for a year or so, the British Government would be glad to receive him. Also, if any Dominion Government asked the British Government to lend them an officer, they would certainly try to do so.

MR. AMERY added that he would be equally willing, as far as the Dominions or Colonial Offices were concerned, to receive or lend officers.

3. *Representation of the British Empire at International Conferences.*

MR. AMERY said that this subject had been included in the agenda for the conference suggested by the British Government. The question had arisen in connection with the London Conference of 1924 on the Dawes Report, and after that Conference Mr. Ramsay MacDonald, who was then Prime Minister, had suggested that the subject might be discussed at the enquiry into constitutional matters suggested by his Government, which was not, in fact, held. The question was how to reconcile the general theoretical decision that the Dominions are entitled to representation at international conferences with practical difficulties which might arise in particular cases—for example, if the number of British Empire representatives were largely to outnumber the representatives from foreign countries.

SIR AUSTEN CHAMBERLAIN said that two questions were really involved: (*a*) The character of representation at international conferences, and (*b*) the method of invitations to take part in such conferences. With regard to the character of representation, questions had arisen in connection with the Lausanne and London Conferences on the Dawes sheme. It followed from what had been said at this conference that the Dominion Governments did not desire to take the responsibility of being represented in many cases. There were technical conferences and political conferences. No difficulty arose with regard to technical conferences, as the Dominions were habitually represented at such conferences by their own delegates. It was, however, a different matter with regard to political conferences. If such a conference exceeded a certain size, its chance of success would diminish in more than geometrical progression. To take an example, at Locarno the key questions were settled by conversations between five Powers; it was a conference of fifteen people, but only six people spoke, and this was the reason that the conference had proceeded so smoothly and successfully. Consequently, he felt that probably in the present circumstances the present system was best suited to the needs of the Empire, but in special cases there might be special Dominion interests, and in such a case one of the representatives should be appointed on the advice of that Dominion. It was impossible that at every negotiation there should be representation of at least one individual from each Dominion.

MR. FITZGERALD then read the following statement:—

> "When the Conference meets to discuss matters affecting the Commonwealth as a whole, Dominions should be duly represented with full powers issued by the King on the advice of the Dominion Governments. The Dominions could be represented by one representative, but all responsibility whatever in these matters must derive from the advice of the Dominion Governments to the King."

SIR AUSTEN CHAMBERLAIN quoted as a special instance the London Conference on the Dawes plan. He pointed out that the British Empire was entitled to 22 per cent. of the total reparation receipts from Germany, and that by agreement between the Governments of the Empire only a minor portion of that percentage was allotted to the Dominions. He asked whether it would be necessary that in such a case all the Dominions should be represented at the conference.

MR. FITZGERALD thought that in such a case the proper course would be for the British Government to communicate with the Dominion Governments, pointing out that Great Britain was chiefly interested, and that it was necessary to keep the

number of representatives at the Conference to the lowest limit, and asking whether the Dominions wished to advise His Majesty to issue full powers to the British Foreign Secretary to represent the Dominions. This course would only be resorted to when it was obviously necessary.

LORD BALFOUR asked what would happen if a foreign power refused to have at its conference members of eight different parts of the Empire.

SIR AUSTEN CHAMBERLAIN stated that at Locarno it would have been impossible to have eight separate representatives from the British Empire without altering the whole character of the conference, and that in that case foreign Governments would not have been content to be limited to three representatives. There might have been one representative of the Government in London and two representatives of Dominion Governments, but he doubted whether that would have been satisfactory to the Dominions Governments not directly represented. At Locarno he represented the Government in London who gave him certain instructions, but allowed him within the limits of those instructions latitude to speak in their name. He asked whether the Dominion Governments would be prepared to give him similar latitude.

MR. FITZGERALD said that what he suggested was that the representative should, if he represented a Dominion, get his full powers on the advice of the Government of that Dominion. No one Government of the Empire should arrogate the right to appoint representatives for all the Governments. He thought that foreign Governments might not appreciate the co-equality of the Governments of the Empire.

SIR AUSTEN CHAMBERLAIN thought that foreign Governments appreciated that no one Government of the Empire could bind the others, but the difficulty which arose related to voting power. Foreign Governments might claim that if the British Empire had a certain number of votes they must have the same number.

LORD BALFOUR said that at the Washington Conference the Dominion representatives met every day and consulted together, but he on occasions had to visit Mr. Hughes alone.

MR. MACKENZIE KING said that if the Dominions had no immediate interest they ought not to be represented and similarly with regard to obligations. At Locarno, for instance, he could imagine people saying : " You may wish to have these Dominions obligated, but if you do you must let them be represented." He thought that the principle " no taxation without representation " should apply here. The Canadian Parliament would demand representation in every case involving direct obligation for Canada.

MR. FITZGERALD said that at the London Conference on the Dawes plan representation was by the panel system, but all the Dominion representatives had full powers issued on the advice of their Governments.

SIR AUSTEN CHAMBERLAIN said that at that conference one Dominion representative sat, together with the Prime Minister of Great Britain, the Dominions taking turns, but this was not a satisfactory arrangement. He then turned to the subject of invitations from foreign Governments, and pointed out that in this case the action was taken by the foreign Government. An ideal solution would be that in a political conference the foreign Government should address one invitation to this Government and then this Government should approach the Dominion Governments as to representation. If this was not considered satisfactory by the Dominions the British Government would do their best to obtain from foreign Governments separate invitations for each Government. They would be given through the diplomatic channel, and the Foreign Office would inform the inviting Government that each Dominion wished to make a separate acceptance through the diplomatic channel in accordance with the normal practice.

LORD BALFOUR said that he could conceive a position where the representative of the British Empire might be a citizen of one of the Dominions.

GENERAL HERTZOG thought that there should be direct invitations to the Dominion Governments.

SIR AUSTEN CHAMBERLAIN asked what was meant by direct invitation. Supposing there were an invitation from the United States Government to a further

naval conference at Washington, there would be three possible courses. (1) The United States might address the British Government through the diplomatic channel asking whether the British Empire would participate, and the British Government would then consult the Dominion Governments as to the method of participation. (2) The United States Government might address the British Government through the diplomatic channel asking whether the Governments in London, Ottawa, Melbourne and the other parts of the Empire would be represented: in this case the British Government would similarly consult the Dominion Governments. (3) The United States Government might approach the British Government and the British Government might reply asking them to address separate invitations to the Dominion Governments through the diplomatic channel.

GENERAL HERTZOG stated that the conception of the British Empire as an entity was one that concerned the Empire, but, from the point of view of the United States, the various parts of the Empire were different States, and if the United States of America wanted to see the Dominions at a conference she should take the necessary steps to have them invited. Foreign nations did not look upon the Dominions as autonomous, and whenever it suited them they tried to exclude the Dominions. It was important that this conception should be corrected.

MR. BRUCE stated that a beginning was being made in the explanation of the Dominions' status to foreign countries and that it was better to deal with questions of invitation and representation as they arose.

LORD BALFOUR considered it an impossible position to tell nations that they should invite all the members of the British Empire or none.

MR. FITZGERALD said that in the event of the United States asking the British Government whether the British Empire would be represented at a conference, he thought that the proper reply would be that the British Government were not empowered to speak for all the Governments of the Empire, and that if the United States wished the British Empire to be represented they must notify the Dominion Governments also.

LORD BALFOUR replied that, in that event, the United States Government might invite the Government in London only.

MR. FITZGERALD said that in that case the Dominion Governments would not be bound by the proceedings of the conference.

SIR AUSTEN CHAMBERLAIN said that in the event of a further naval conference the United States Government would probably not invite the Union Government or the Government of the Irish Free State as not possessing naval armaments, but the Union Government might wish to be represented in order to make clear the autonomous position of the Union.

GENERAL HERTZOG said that, in such a case, they could appoint a British delegate to hold a watching brief of the conference.

SIR AUSTEN CHAMBERLAIN thought that this came to what Mr. Bruce had suggested, namely, that each case should be dealt with on its merits and that there should be free consultation.

MR. AMERY agreed with a statement made by Mr. Mackenzie King that the important thing was not the form of the invitations, which could not be controlled, but the form of the acceptance or acceptances. It would be possible to educate foreign Governments as to the form of invitation which they should issue if acceptance of an invitation addressed to the British Empire were couched in the form of separate acceptances on behalf of each Government.

2, *Whitehall Gardens, S.W.* 1,
November 8, 1926.

Printed for the Imperial Conference. November 1926.

MOST SECRET.

Copy No. 6

E. (I.R.—26). 9th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MINUTES OF THE NINTH MEETING OF THE COMMITTEE, HELD IN THE CABINET ROOM, FOREIGN OFFICE, S.W. 1, ON TUESDAY, NOVEMBER, 9, 1926, AT 10·30 A.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. Sir AUSTEN CHAMBERLAIN, K.G., M.P., Secretary of State for Foreign Affairs.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and the Colonies.

The Right Hon. Sir DOUGLAS HOGG, K.C., M.P., Attorney-General.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

The Hon. N. C. HAVENGA, Minister of Finance.

Newfoundland.

The Hon. W. S. MONROE, Prime Minister.

The Hon. A. B. MORINE, K.C., Minister without Portfolio.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

The Hon. E. LAPOINTE, K.C., Minister of Justice.

New Zealand.

The Right. Hon. J. G. COATES, M.C., Prime Minister.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

Mr. DESMOND FITZGERALD, T.D., Minister for External Affairs.

Mr. J. COSTELLO, K.C., Attorney-General.

India.

The MAHARAJA OF BURDWAN, G.C.I.E., K.C.S.I., I.O.M.

The following were also present:

Great Britain.

Mr. C. W. DIXON, O.B.E., Dominions Office.

Canada.

Dr. O. D. SKELTON, Deputy Minister for External Affairs.

Union of South Africa.	*Irish Free State.*
Mr. D. STEYN, Private Secretary to Prime Minister.	Mr. J. P. WALSHE, Secretary, Department of External Affairs.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*

Mr. P. A. KOPPEL, C.B.E. (Foreign Office)
Mr. C. R. PRICE (Dominions Office)
Mr. JEAN DÉSY (Canadian Delegation)
} *Joint Assistant Secretaries to the Committee.*

COMPULSORY ARBITRATION.

SIR DOUGLAS HOGG thought that all the members of the Committee would have read the memorandum setting out the position which the Government in London considered a wise position to take up, namely, that of waiting some time before accepting the compulsory clause of the Statute of the Permanent Court. The position was that, when the Statute was first drawn up, there was some question as to whether arbitration should be made compulsory by the terms of the Statute itself. The legal advisers of three separate Governments in London had advised against this. Under article 13 of the Covenant it was provided that members of the League agreed that, whenever any dispute should arise between them which they recognised to be suitable for submission to arbitration and which could not be settled satisfactorily by diplomacy, they would submit the whole subject matter to arbitration. Disputes as to the interpretation of any treaty; as to any question of international law; as to the existence of any fact which, if established, would constitute a breach of any international obligation; or as to the extent and nature of the reparation to be made for any such breach, were declared to be among those which are generally suitable for submission to arbitration. All members of the League of Nations were therefore bound to this extent. The question was, therefore, not whether matters should be generally submitted to arbitration, but whether the members of the League should beforehand bind themselves to send all disputes of this character to arbitration. He could imagine questions which it would be difficult for Governments of the Empire to submit to arbitration, for instance, the question as to whether this country should keep its army in Egypt, or the question of Japanese immigration into Canada. He could conceive questions in which, if compulsory arbitration were consented to, Governments of the Empire would be forced to go to such arbitration knowing that their Parliaments would not accept any adverse decision. Another difficult question was that of the law of prize, in which there were differences between the British, United States and Continental practices. If such a question was submitted it would be with the knowledge that the tribunal, with a majority of foreign lawyers, would find against the British practice; and yet it was a matter vital to the Empire. It might be that with the effluxion of time, as the Court justified itself, it would be desirable to agree to compulsory arbitration; but he thought it would be prudent to wait at present. This was a matter on which all the members of the Empire should act unanimously.

SIR AUSTEN CHAMBERLAIN pointed out that there was a case in which Great Britain had proposed arbitration concerning the right of the United States of America to take a certain proportion of the reparations payments, but the United States Government refused. The United States had always refused to arbitrate where questions of vital interest, independence or honour might be concerned.

MR. LAPOINTE then made the following statement :—

"I have read with interest the memorandum circulated by the British Government on the subject of compulsory arbitration. In view of the fact that the Canadian Government last year expressed readiness to consider acceptance of the compulsory jurisdiction of the Permanent Court in justiciable disputes, though with certain reservations, I may perhaps make a brief statement on the question now.

"Public opinion in Canada is strongly in sympathy with the extension of the methods of joint enquiry or arbitration in the settlement of international

disputes, assuming, it should be added, that the enforcement of the findings is to be left to the pressure of national and international opinion, and is not to be undertaken by force in the hands of third parties. We have not always fared well in international arbitrations in which our interests have been at stake, but the gain to world peace involved in the acceptance and application of the principle of arbitral settlement of disputes may more than offset specific disadvantages.

"I have not been wholly convinced by the considerations advanced against acceptance of compulsory jurisdiction of the Permanent Court under Article 36 of its statute. Jurisdiction would be limited to disputes relating to the interpretation of a treaty, any question of international law, the existence of any fact, which, if established, would constitute a breach of international obligation, and the nature or extent of the reparation to be made for the breach of an international obligation. These are exactly the four types of cases which by Article 13 of the Covenant we have all recognised as 'generally suitable for submission to arbitration.' It is true they are stated to be *generally* suitable; an agreement in advance to accept every dispute falling within one of these categories is undoubtedly a much more precise and binding obligation.

"It has been urged that, while we would loyally carry out our engagements, we have no security that foreign Powers would do so, and, further, that there is no likelihood of either the United States or Soviet Russia accepting compulsory arbitration. We may surely believe that some at least of foreign Powers would honour their word, and that the united force of our example will in time set higher standards of international conduct. In any case, Article 36 provides that acceptance may be made on condition of reciprocity, or for a limited time.

"There may, it is true, be difficulty in a democratic country in securing the assent of Parliament to the enforcement of awards. That difficulty, however, faces us alike, whether we have made a general agreement of arbitration or a special agreement to submit one specific question. It is not until the terms of the award are known that the attitude of Parliament can be revealed.

"We agree that there are some vital issues which our public opinion would not wish to see exposed to the hazard of arbitration—for example, the validity of restrictions on immigration into a Dominion. It is not apparent, however, that such an issue would fall within one of these four categories; and, in any case, it has, I believe, been considered by high British legal authority that such issues could be safeguarded by explicit reservations.

"There seem to us good grounds for believing that the general acceptance of the optional clause by the members of the British Commonwealth represented in the League would make for confidence and peace. At the same time, we recognise the force of the consideration that in a matter of such moment it may be desirable to await the test of time and to observe the methods and the measure of success of the Permanent Court before making further commitments. We are therefore prepared to postpone further consideration of the proposal for the present."

MR. BRUCE said that the position of Australia was that there was a large volume of public opinion in favour of compulsory arbitration. He thought, however, that there would be a complete revulsion of feeling if this proportion of the public realised that certain matters, however vital to the Empire, would have to be arbitrated. The Australian opinion generally, however, was that compulsory arbitration would at the present time be undesirable; because (1) the Court had only been established a short time, and they would like to have further experience of it; and (2) there were great nations who had not agreed to such compulsion, *e.g.*, the United States of America. It was, however, desirable that all possible questions should be referred to arbitration. He shared strongly in the view that all parts of the Empire should be unanimous in their action. In a word, while the Commonwealth Government subscribed to the principle of arbitration, and hoped that the Court would so establish itself as to make it possible eventually to refer all questions to arbitration, they thought that, for the present, it was unsafe to bind themselves to do so.

MR. COATES thought it was difficult to say that people understood all about the Court. While the New Zealand Government subscribed to the principle of arbitration, they wanted to know what other countries were going to do before they committed themselves absolutely to compulsory arbitration.

GENERAL HERTZOG said that in South Africa the feeling was that if they could have arbitration, they should have it; but that the time had not yet come to submit to it compulsorily in every case.

MR. FITZGERALD said that, as far as public opinion had expressed itself in the Irish Free State, it was in favour of compulsory arbitration. The Free State Government had, however, postponed any action for the present, and they were prepared to agree to the proposal for further postponement for some time to come.

MR. MONROE said that Newfoundland had no position in the League of Nations; but he agreed that the matter should be postponed.

THE MAHARAJA OF BURDWAN said that, whilst the Government of India would no doubt agree to the principle of arbitration, it must feel that the time was not yet ripe to submit to it compulsorily.

SIR AUSTEN CHAMBERLAIN said that when he was discussing the Protocol he had ascertained that, though some European nations were ready to sign, they would only do so either with actual or mental reservations. The Permanent Court, unlike other courts, did not administer a settled and agreed body of law or follow any fixed rules of evidence. There was no general agreement as to maritime law in international law, and the law, as settled by the United States of America and ourselves, was not accepted by other nations, especially the non-maritime nations. The majority of judges of the Court would, therefore, probably be administering a system which the Governments of the Empire did not recognise as a body of international law.

SIR DOUGLAS HOGG stated that in a recent case before the Permanent Court, the tribunal had been prepared to allow hearsay evidence with regard to the interpretation of a clause in the Treaty of Lausanne. No two countries had the same rules of evidence, and this was one of the great difficulties of the case.

IT WAS AGREED that no resolution should be proposed to the Conference on this question, it being understood that no Government would take any action in the direction of the acceptance of the compulsory jurisdiction of the Court without bringing the matter up again for discussion.

A discussion then arose on a draft formula which had been circulated to the Committee. As on former occasions no minutes were taken of the proceedings, but the following formula was provisionally arrived at as a basis for future discussion:—

> "Great Britain and the self-governing Dominions are autonomous communities of equal status, united by the common bond of the Crown. They stand in no subordination one to another in matters national or international, but are freely associated as members of the British Commonwealth of Nations within the British Empire."

2, *Whitehall Gardens, S.W.* 1,
November 9, 1926.

Printed for the Imperial Conference. November 1926.

MOST SECRET. **Copy No. 6**

E. (I.R —26.) 10th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MEETING OF PRIME MINISTERS (OR HEADS OF DELEGATIONS) HELD IN THE CABINET ROOM, FOREIGN OFFICE, ON TUESDAY, NOVEMBER 9, 1926.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.
The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and for the Colonies.

Commonwealth of Australia.
The Right Hon. S. M. BRUCE, M.C., Prime Minister.

Union of South Africa.
General the Hon. J. B. M. HERTZOG, Prime Minister.

Newfoundland.
The Hon. W. S. MONROE, Prime Minister.

Canada.
The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

New Zealand.
The Right Hon. J. G. COATES,* M.C., Prime Minister.

Irish Free State.
Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

India.
The Right Hon. the EARL OF BIRKENHEAD.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*

THE COMMITTEE met in the Cabinet Room at the Foreign Office immediately after the meeting held to consider the questions of Compulsory Arbitration and the proposed Declarations in regard to the status of the several parts of the British Empire. (See E. (I.R./26) 9th Meeting.)

THE KING'S TITLE.

1. The Committee first discussed the question of the change in the King's title desired by the Irish Free State (E. (I.R./26) 3, paragraph 7).

GOVERNMENT HOSPITALITY AT IMPERIAL CONFERENCES.

2. A short discussion took place in regard to Government Hospitality at Imperial Conferences.

2, *Whitehall Gardens, S.W.* 1,
November 9, 1926.

* Mr. Coates was obliged to leave shortly after the outset of the Meeting.

Printed for the Imperial Conference. November 1926.

SECRET. **Copy No. 6**

E. (I.R.—26). 11th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MINUTES OF THE ELEVENTH MEETING OF THE COMMITTEE, HELD IN THE CABINET ROOM, FOREIGN OFFICE, ON THURSDAY, NOVEMBER 11, 1926, AT 3 P.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. Sir AUSTEN CHAMBERLAIN, K.G., M.P., Secretary of State for Foreign Affairs.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and the Colonies.

Commonwealth of Australia.

The Hon. J. G. LATHAM, C.M G., K.C., Attorney-General.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

The Hon. N. C. HAVENGA, Minister of Finance.

Newfoundland.

The Hon. A. B. MORINE, K.C., Minister without Portfolio.

Canada

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

The Hon. E. LAPOINTE, K.C., Minister of Justice.

New Zealand.

The Right. Hon. J. G COATES, M.C., Prime Minister.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

Mr. DESMOND FITZGERALD, T.D., Minister for External Affairs.

Mr. P. McGILLIGAN, T. D., Minister for Industry and Commerce.

Mr. J. COSTELLO, K.C., Attorney-General.

India.

The MAHARAJA OF BURDWAN, G.C.I.E., K.C.S.I., I.O.M.

Mr. D. T. CHADWICK, C.S.I., C.I.E., Secretary to Government of India, Commerce Department.

The following were also present:

Great Britain.

Sir WILLIAM TYRRELL, G.C.M.G., K.C.V.O., C.B., Permanent Under-Secretary of State for Foreign Affairs.

Canada.

Dr. O. D. SKELTON, Deputy Minister for External Affairs.

New Zealand.

Mr. F. D. THOMSON, C.M.G., Secretary to the Delegation.

Union of South Africa.

Mr. D. STEYN, Private Secretary to the Prime Minister.

Irish Free State.

Mr. J. P. WALSHE, Secretary of the Department of External Affairs.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*

Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee.*—

Mr. P. A. KOPPEL, C.B.E. (Foreign Office)
Mr. C. W. DIXON, O.B.E. (Dominions Office)
Mr. JEAN DÉSY (Canadian Delegation)
} *Joint Assistant Secretaries to the Committee.*

THE COMMITTEE considered the memorandum circulated by the Irish Free State delegation on existing anomalies in the British Commonwealth of Nations (E. I.R. (26) 3).

As regards matters referred to in paragraphs 2 and 3 (*a*), MR. AMERY stated that the position as regards despatches notifying that His Majesty would not be advised to exercise the power of disallowance in respect of Dominion legislation was as stated in the memorandum. This was in accordance with an old custom, and, as a matter of sentiment, he would prefer the form to remain, but if it caused misapprehension as to the constitutional position, he would not press for its retention.

MR. O'HIGGINS said that in the Irish Free State the position whereby forms survived after the substance had ceased to exist was not understood, and that the retention of such forms was an implication of subordination.

MR. AMERY referred to the statutory condition laid down by the Treasury, under the Colonial Stock Act of 1900, for the inclusion of Dominion and Colonial loans in trustee securities, that there should be a formal expression of opinion that legislation, which appeared to the British Government to alter provisions affecting the stock to the injury of the stockholder, would properly be disallowed. This was a corollary to a special favour given to Dominion and Colonial securities. If the practice of disallowance were discontinued, it would be necessary to consider what condition could be substituted for this as regards future loans, in order not to deprive the securities in question of the privileges which they enjoyed. In the case of existing loans, the condition was definitely attached, and could not be modified.

A general discussion ensued, in the course of which MR. LATHAM drew attention to the special position in Australia, where the Commonwealth Constitution provided definitely for disallowance and reservation in certain cases. He pointed out that the Constitution had been arrived at by agreement with the Governments of the States, and that the Constitution could only be altered by legislation of the Commonwealth Parliament approved by a referendum, as a result of which the majority of the States and the majority of the people agreed. Consequently, it would not be possible for the Commonwealth Government, which was only one of the Governments concerned, to agree by resolution to an amendment of the Constitution.

It was finally agreed that the questions raised required consideration by legal experts, and that the most satisfactory course would be that they should be referred to a special committee, to be held as soon as possible after the termination of the Imperial Conference. The Committee decided to appoint a drafting sub-committee, consisting of Mr. Amery, Mr. Lapointe, Mr. Latham, Sir Francis Bell and Mr. Costello, to prepare for the consideration of the Committee draft terms of reference to such a committee, taking into account not only the questions referred to in paragraphs 2 and 3 (*a*) of the Irish Free State memorandum, but also those mentioned in paragraphs 5 and 6.

SIR AUSTEN CHAMBERLAIN then dealt with paragraph 2 (*b*) of the memorandum of the Irish Free State delegation concerning the issue of exequaturs

to consuls. He stated that the British Government accepted the proposal that any application by a foreign Government for the issue of an exequatur to a person who was to act as consul in a Dominion should be referred to the Dominion Government for consideration, and that, if the Dominion Government agreed to the issue of the exequatur, the exequatur would be sent to them for counter-signature by a Dominion Minister. He had already given instructions that this procedure should be followed in a case which had arisen affecting Canada, and it would be followed in future in all cases.

MR. FITZGERALD asked whether the same principle would apply in the case of a Dominion wishing to appoint a consul.

SIR AUSTEN CHAMBERLAIN replied that, in the event of such appointments being made, the application of the Dominion would most conveniently go through the diplomatic channel. This was a matter of convenience and the ordinary practice amongst nations. If the Dominion had its own Minister in the foreign country concerned, he would naturally be employed as the channel. The only other paragraph of the memorandum dealing with a matter not already under discussion or dealt with was paragraph 9, which related to the channel of communication between foreign Governments and the Dominions. As to this, his view was that, so far as technical matters were concerned, no question need arise; but on matters of general and political interest it was very desirable that the universal practice should be observed of using the diplomatic channel.

MR. FITZGERALD asked whether it would be agreeable that, where the Free State had not a separate diplomatic representative in a foreign country, the Free State Government should communicate direct with His Majesty's Representative, at the same time informing the British Government.

SIR AUSTEN CHAMBERLAIN said that he would prefer that instructions from a Dominion Government to one of His Majesty's Representatives should pass through him, as it might be inconvenient if two separate authorities were issuing independent instructions. He would pass on to His Majesty's Representative the instructions of the Dominion Government and ask His Majesty's Representative to act on them. In 1920, when the arrangements for the appointment of a Canadian Minister at Washington were under discussion, it had been proposed that the Canadian Minister at Washington should act for His Majesty's Ambassador in his absence. Mr. Mackenzie King had since pointed out that this would not be desirable, as it would involve the Canadian Minister having to act on instructions from the British Government, to whom he would not be responsible. Sir Austen Chamberlain added that it was not necessary that such matters as messages of courtesy or condolence should be communicated through the diplomatic channel.

MR. FITZGERALD said that he was prepared to accept this position, but reserved the right to protest if there were undue delay.

As regards the question of appeals to the Judicial Committee of the Privy Council, referred to in paragraph 8 of the memorandum, MR. O'HIGGINS stated that in this matter he desired to inform the Committee that, as a result of conversations which he had with Lord Birkenhead and the Attorney-General, his delegation had decided not to press this matter to a conclusion at the present Conference. He wished it to be understood that, in adopting this course, the representatives of the Free State were not withdrawing in any degree from the contentions embodied in their memorandum. In leaving the matter over for the present he did so without prejudice to the position which they had taken upon these appeals and simply in response to representations that it was inopportune and inexpedient to seek a definite decision at the present time.

SYSTEM OF COMMUNICATION AND CONSULTATION.

THE COMMITTEE then considered the draft resolution circulated as Paper E (I.R./26) 6, and it was agreed that the draft resolution should be reserved for further discussion when the question of the representation of the British Government in the Dominions had been further considered.

2, *Whitehall Gardens, S.W.* 1,
November 11, 1926.

Printed for the Imperial Conference. *November* 1926.

MOST SECRET. **Copy No. 6**

E. (I.R.—26.) 12th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MEETING OF PRIME MINISTERS (OR HEADS OF DELEGATIONS), HELD IN THE LORD PRESIDENT'S ROOM, PRIVY COUNCIL OFFICE, ON MONDAY, NOVEMBER 15, 1926, AT 3·30 P.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and for the Colonies.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

India.

The Right Hon. the EARL OF BIRKENHEAD.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*

Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee.*

AS before, no Minutes were kept of this meeting of Prime Ministers and Heads of Delegations.

THE COMMITTEE discussed draft paragraphs for their Report with regard to the Constitution of the British Empire and the relationship between Great Britain and the Dominions, submitted by Lord Balfour and eventually adopted provisionally in a revised form.

THE SECRETARY OF STATE FOR DOMINION AFFAIRS undertook to prepare some draft Resolutions on the subject of Empire inter-communication for consideration at the meeting on the following day.

2, *Whitehall Gardens, S.W.* 1,
November 15, 1926.

Printed for the Imperial Conference. November 1926.

MOST SECRET. **Copy No. 6**

E. (I.R.—26.) 13th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MEETING OF PRIME MINISTERS (OR HEADS OF DELEGATIONS), HELD IN THE LORD PRESIDENT'S ROOM, PRIVY COUNCIL OFFICE, ON TUESDAY, NOVEMBER 16, 1926, AT 11 A.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and for the Colonies.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

India.

The Right Hon. the EARL OF BIRKENHEAD.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*
Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee.*

AS before, no Minutes were kept.

THE COMMITTEE discussed draft Resolutions on the subject of Empire inter-communication, proposed by the Secretary of State for Dominion Affairs.

MR. MACKENZIE KING and MR. BRUCE undertook to prepare a fresh draft on this subject.

The Secretaries were instructed to circulate a draft Report covering the whole of the work of the Committee.

2, *Whitehall Gardens, S.W.* 1,
November 16, 1926.

Printed for the Imperial Conference. November 1926.

SECRET.

Copy No. 6

E. (I.R.—26). 14th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MINUTES OF THE FOURTEENTH MEETING OF THE COMMITTEE, HELD IN THE CABINET ROOM AT THE FOREIGN OFFICE ON THURSDAY, NOVEMBER 18, 1926, AT 12 NOON.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. Sir AUSTEN CHAMBERLAIN, K.G., M.P., Secretary of State for Foreign Affairs.

*The Right Hon. VISCOUNT CAVE, G.C.M.G., Lord Chancellor.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and the Colonies.

*The Right Hon. Sir DOUGLAS HOGG, K.C., M.P., Attorney-General.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister..

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

The Hon. N. C. HAVENGA, Minister of Finance.

Newfoundland.

The Hon. W. S. MONROE, Prime Minister.

The Hon. A. B. MORINE, K.C., Minister without Portfolio.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

The Hon. E. LAPOINTE, K.C., Minister of Justice.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

The Right Hon. Sir FRANCIS BELL, G.C.M.G., K.C., Minister without Portfolio.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

Mr. DESMOND FITZGERALD, T.D., Minister for External Affairs.

Mr. J. COSTELLO, K.C., Attorney-General.

India.

*The Right Hon. the EARL OF BIRKENHEAD, Secretary of State for India.

The MAHARAJA OF BURDWAN, G.C.I.E., K.C.S.I., I.O.M.

Mr. D. T. CHADWICK, C.S.I., C.I.E., Secretary to Government of India, Commerce Department.

* Present for part of the discussion only.

The following were also present:

Great Britain.

Sir C. J. B. HURST, G.C.M.G., K.C.B., K.C., Legal Adviser, Foreign Office.

Union of South Africa.

Mr. D. STEYN, Secretary to the Delegation.

Canada.

Dr. O. D. SKELTON, Deputy Minister for External Affairs.

Irish Free State.

Mr. J. P. WALSHE, Secretary of the Department of External Affairs.

Mr. J. J. HEARN, Assistant Parliamentary Draughtsman.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*

Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee.*

Mr. P. A. KOPPEL, C.B.E. (Foreign Office),
Mr. C. W. DIXON, O.B.E. (Dominions Office)
Mr. JEAN DESY (Canadian Delegation)
} *Joint Assistant Secretaries to the Committee.*

THE COMMITTEE considered the draft Report E (I.R—26) 9.

As regards page 9, SIR FRANCIS BELL raised the question whether, in the suggested change in His Majesty's title, the words "British Territories" might be substituted for "British Dominions," on the ground that the expression "Dominions," though intended to refer to all His Majesty's Dominions, including the Colonies, might be interpreted as relating only to the self-governing Dominions. He did not press the point, though he thought that some such change would be found necessary within a few years. It was agreed that the proposed title should read as in the draft Report, except that the word "King" should appear after the words "beyond the seas" and not before "of Great Britain." The Committee took note, however, of Sir Francis Bell's view.

As regards page 13 of the draft Report, MR. AMERY suggested that paragraph i (*a*) might be omitted, since the matters referred to in it were covered by paragraph ii. He also suggested that paragraph i (*b*) might be omitted, since it dealt not with the relations between Ministers in Great Britain and Ministers in the Dominions, but with the relations between the Crown and Ministers, and therefore seemed inappropriate in the present report. The paragraph as it stood might raise questions in relation to the right of the Governor of one of the Australian States to withhold assent to legislation effecting a fundamental change in the Constitution of the State. In Great Britain it was recognised that the latent power of the Crown to refuse assent to legislation, though not exercised in normal circumstances, might in exceptional circumstances have to be employed, *e.g.*, if Parliament were to pass legislation prolonging its life for an indefinite or very long period.

MR. O'HIGGINS pointed out that the whole of this paragraph was governed by the last paragraph on page 12 and the first paragraph on page 13. In the Irish Free State the question of withholding of assent to and reservation of legislation was governed by Article 41 of the Constitution, which laid it down that the Governor-General should act in accordance with the constitutional usage of Canada, and he understood paragraph i (*b*) was intended only to describe the constitutional usage in refuse assent to the legislation of a Dominion.

MR. AMERY said that paragraph i (*b*) might be read as an attempt by the Conference to lay down a general principle that in no circumstances could the Crown refuse assent to the the legislation of a Dominion.

MR. MACKENZIE KING thought that a Governor-General should never be placed in the position of refusing assent to or reserving legislation against the advice of his Ministers.

MR. BRUCE thought that a distinction should be drawn between reservation and the withholding of assent. Having regard to the principle of equality of status, he did not wish any constitutional principle to be laid down as to the relations between the Crown and Ministers in a Dominion which was not equally laid down as to the relations between His Majesty and Ministers in Great Britain.

MR. O'HIGGINS suggested that the words "on any advice other than that of the Ministers of such Dominion" might be substituted for "against the advice of Ministers of such Dominion." This would leave cases in which action was taken without the advice of any Ministers outside the scope of the paragraph.

GENERAL HERTZOG supported Mr. O'Higgins's proposal.

It was agreed that further consideration of Mr. O'Higgins's proposal should be deferred until the meeting of the afternoon, in order that the Lord Chancellor and the Attorney-General might have an opportunity of taking part in the discussion.

MR. AMERY suggested that in paragraph ii the word "legislation" should be substituted for "affairs."

MR. O'HIGGINS thought that this alteration might suggest that, as regards certain affairs of a Dominion other than legislation, His Majesty's Government in Great Britain might advise His Majesty against the views of the Dominion Government.

MR. AMERY explained that the reason for his suggestion had been that the whole passage referred to legislation; but he would not press his suggestion.

(The Committee then adjourned until 3·15 P.M., when Sir Douglas Hogg was present.)

LORD BALFOUR explained the position which had been reached when the meeting adjourned.

LORD BIRKENHEAD said that it was obviously important, without the sacrifice of anything vital, to meet the wishes of those who had differed from Mr. Amery's suggestion for the omission of the paragraphs in question. He doubted whether the reasons given for the omission of those paragraphs were adequate. i (*a*) appeared to him to be a commonplace, and he could not conceive that any British Cabinet would act in the way therein mentioned. He referred to a statement by Mr. Joseph Chamberlain in a despatch relating to the Reid Contract in Newfoundland, to the effect that in no circumstances would a Cabinet in Great Britain interfere with the affairs of a Dominion. However, tautology was better than dissent. With regard to i (*b*), these words were important, because they led to the discussion initiated by Mr. Bruce in the morning as to the ultimate implication of the conception of the Crown as a common bond of Empire. There was no difference in the position of a Dominion in such a matter from that of Great Britain. Certain illustrations, however, had been mentioned of cases in which it was remotely conceivable—though not probable—that some Parliament would act in a way quite contrary to constitutional practice as conceived in Great Britain; in such a case, unless the parliament were to be left uncorrected, it must be corrected by the Crown at any risk. He would be willing to face the risk of intervention of the Crown in such a case. In Great Britain it was 140 years since the Crown had intervened against the advice of Ministers, and, though such intervention had been successful, he himself doubted whether similar action would again be taken by the Crown. With regard to i (*b*), he would say that a Governor-General would have to take the same risk as the Crown would have to take in Great Britain. He personally was prepared to accept the words proposed by Mr. O'Higgins and General Hertzog.

(At this point Lord Cave entered.)

LORD CAVE said that paragraph i (*a*) did not appear to him to be quite a commonplace. He had agreed that all these important matters should be referred to a committee, but he considered that their terms of reference should be general, and that it should be left open to everyone concerned to raise vital questions in which they were interested if they wished. Paragraph i (*b*), as originally worded in the draft Report, would remove from the Governor-General in relation to Dominion legislation the right possessed by His Majesty as regards legislation in Great Britain.

Printed for the Imperial Conference. November 1926.

MOST SECRET. **Copy No. 6**

E. (I.R.—26). 15th Meeting.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

MINUTES OF THE FIFTEENTH MEETING OF THE COMMITTEE, HELD AT 10, DOWNING STREET, S.W. 1, ON FRIDAY, NOVEMBER 19, 1926, AT 11·30 A.M.

Present:

The Right Hon. the EARL OF BALFOUR, K.G., O.M., Lord President of the Council (*in the Chair*).

Great Britain.

The Right Hon. Sir AUSTEN CHAMBERLAIN, K.G., M.P., Secretary of State for Foreign Affairs.

The Right Hon. L. S. AMERY, M.P., Secretary of State for Dominion Affairs and the Colonies.

Commonwealth of Australia.

The Right Hon. S. M. BRUCE, M.C., Prime Minister.

Union of South Africa.

General the Hon. J. B. M. HERTZOG, Prime Minister.

The Hon. N. C. HAVENGA, Minister of Finance.

Newfoundland.

The Hon. W. S. MONROE, Prime Minister.

The Hon. A. B. MORINE, K.C., Minister without Portfolio.

Canada.

The Right Hon. W. L. MACKENZIE KING, C.M.G., Prime Minister.

The Hon. E. LAPOINTE, K.C., Minister of Justice.

New Zealand.

The Right Hon. J. G. COATES, M.C., Prime Minister.

Irish Free State.

Mr. KEVIN O'HIGGINS, T.D., Minister of Justice.

Mr. DESMOND FITZGERALD, T.D., Minister for External Affairs.

Mr. P. MCGILLIGAN, T.D., Minister for Industry and Commerce.

India.

The MAHARAJA OF BURDWAN, G.C.I.E., K.C.S.I., I.O.M.

Mr. D. T. CHADWICK, C.S.I., C.I.E., Secretary to Government of India, Commerce Department.

The following were also present:

Canada.

Dr. O. D. SKELTON, Deputy Minister for External Affairs.

Union of South Africa.

Mr. D. STEYN, Private Secretary to the Prime Minister.

Sir M. P. A. HANKEY, G.C.B., *Secretary to the Committee.*
Mr. E. J. HARDING, C.B., C.M.G., *Deputy Secretary to the Committee*

MR. AMERY drew the attention of the Committee on Inter-Imperial Relations to the following passage on pages 10 and 11 of the Report of the Committee (E. 129), which had been circulated to the Imperial Conference on the previous evening :—

> " On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, the constitutional practice is that it is the exclusive right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs, and that advice would not be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion."

On examination, he had found that the wording of this passage was open to certain practical objections, insomuch as it would prevent the British Government from offering any advice whatsoever to His Majesty the King in any matter appertaining to the affairs of a Dominion—even on a purely formal question. He gave several instances of matters in which the Secretary of State for Dominion Affairs might be called upon to give advice to the King. Sometimes, for example, petitions were received by the King from private persons or from native races in a Dominion, and in such a case the Secretary of State for Dominion Affairs would advise the King to refer the matter to the Government concerned. Another example was in regard to the appointment of Governors-General. He thought it would be generally agreed as in the interests of the Dominions themselves that His Majesty's Government in Great Britain should be a party in advising the King on this matter, and for some years the practice had been to advise the King in agreement with the Government of the Dominion concerned. Even in matters of this kind His Majesty's Government in Great Britain would, by the terms of the paragraph quoted above, be precluded from offering advice to His Majesty. Mr. Amery therefore suggested that some alternative draft should be adopted.

After a short discussion, the following formula was agreed to, and the Secretary was instructed to circulate it as a corrigendum to E. 129 :—

> " On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, it is recognised that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs. Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion."

2, *Whitehall Gardens*, S.W. 1,
November 19, 1926.

Printed for the Imperial Conference. December 1926.

SECRET.

Copy No. 6

E. (I.R.—26) 1.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

DRAFT DECLARATION PREPARED BY GENERAL HERTZOG.

THE Prime Ministers of the—

United Kingdom

and of the Dominions of—

Canada,
Australia,
New Zealand,
South Africa,
Newfoundland and
Ireland,

with their associated fellow Ministers assembled at the Imperial Conference, recognising that—

they are respectively the representatives of independent States, equal in status and separately entitled to international recognition, with Governments and Parliaments independent of one another; united by the common bond of allegiance to the Crown and freely associated as members of the British Commonwealth of Nations,

are agreed that—

(*a*) whatever surviving forms of inequality or subordination there may be in the mutual relations between the one and any other of the said States, whether in respect of legislature, executive or judiciary, such inequality or subordination is due to and dependent upon the voluntary consent of the associated State concerned,

and—

(*b*) that it is desirable that the constitutional relationship between Great Britain and the Dominions be properly known and recognised, and that the necessary steps be taken that the equal status of the associated States and their relations as above set forth be formally and authoritatively intimated to their own communities and to the world at large.

2, *Whitehall Gardens, S.W.* 1,
October 28, 1926.

Printed for the Imperial Conference, 1926.

SECRET.

Copy No. 35

E (I.R./26)2

IMPERIAL CONFERENCE, 1926.

COMPULSORY ARBITRATION IN INTERNATIONAL DISPUTES.

MEMORANDUM PREPARED FOR THE IMPERIAL CONFERENCE.

HIS Majesty's Government have had occasion to consider on more than one occasion the possibility of acceptance of the principle of arbitration in all international disputes, either by signifying their acceptance of the clause in the statute of the Permanent Court of International Justice providing for the compulsory submission of certain classes of cases to the Court, or by the conclusion of treaties with individual foreign countries providing for the submission of all disputes without exception to arbitration.

The matter is one upon which it seems essential that there should be uniformity of action on the part of all the Governments of the Empire, and His Majesty's Government therefore desire to bring the question before the Imperial Conference.

Under Article 13 of the Covenant of the League of Nations, the members of the League have agreed that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration or judicial settlement, and which cannot be satisfactorily settled by diplomacy, they will submit the whole matter to arbitration or judicial settlement, and the Article goes on to recognise that disputes relating to the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, or the nature or extent of the reparation to be made for the breach of an international obligation are "generally suitable for submission to arbitration." The question involved, therefore, is whether it is desirable to go further and to agree in advance to submit to arbitration every dispute of this nature which may arise, even though questions of vital interest, independence or honour may be concerned.

When the constitution of the Permanent Court of International Justice was under consideration in 1920, the draft scheme then prepared contained articles providing for compulsory arbitration in the cases now under discussion. The question was referred to the highest legal authorities in Great Britain, and a considered and unanimous opinion was pronounced in October 1920, signed by the then Lord Chancellor, the Attorney-General and Solicitor-General (Lord Birkenhead, Sir Gordon (now Lord) Hewart, and Sir Ernest Pollock (now Lord Hanworth)), advising against the acceptance of the articles. In view of this opinion His Majesty's Government felt unable to accept the articles as originally drafted, and their provisions were ultimately so modified by the League as to assume the form in which they now stand in Article 36 of the Statute, that is, leaving it optional for any State to accept the obligation of compulsory arbitration under the heads mentioned.

The question of accepting the compulsory arbitration of the Court was again considered in the summer of 1924, when memoranda were prepared by the then Lord Chancellor (Lord Haldane) and the then Permanent Under-Secretary of State for Foreign Affairs advising against this course. At the wish of the Prime Minister (Mr. Ramsay MacDonald) copies of these memoranda were communicated to the Dominion Governments, whose views on the whole question were invited. Immediately afterwards the question arose in a practical form as a result of the discussions at Geneva, leading to the framing of the Protocol for the Pacific Settlement of International Disputes, under which the signatories would have accepted

the compulsory jurisdiction of the Court in the cases referred to in Article 36 of its Statute with the right to make reservations compatible with that Article.

Either in reply to the despatch mentioned in the preceding paragraph or in the course of the discussions on the Protocol, varying expressions of opinion were made by the Governments of the Dominions and India. These are summarised in the Annex. It will be seen that, while the Governments of Canada and the Irish Free State were inclined to favour acceptance of the compulsory jurisdiction of the Permanent Court in justiciable disputes, the Governments of the Commonwealth of Australia, New Zealand and India were opposed to such acceptance, while the Government of the Union of South Africa did not express any definite opinion.

The main advantages claimed for acceptance of the compulsory jurisdiction of the Court are two :—

1. If the principle were accepted by the Governments of the Empire, their example would have a very great influence throughout the world, and especially with the smaller turbulent foreign Powers, whose disputes have in the past often led to great wars. The preservation of peace is vital to the continued maintenance of civilisation, and any measure which will help to convert public opinion to substitute conciliation and arbitration for the use of force, must, it is argued, be of immense value.
2. If the jurisdiction of the Permanent Court in all the cases mentioned were accepted without exception, any foreign country, which also had accepted the principle, would be bound to submit to arbitration any particular dispute with any part of the Empire, if the Government of that part of the Empire desired this course to be taken.

On the other hand, the following considerations have been urged against acceptance :—

(*a.*) The advantages claimed above are to a great extent illusory. While an undertaking by any part of the Empire will always be loyally carried out to the fullest practicable extent, there is no security that foreign countries will not attempt to evade their obligations in cases where it suits them to do so. In any case, whatever other foreign countries may decide to do, there is no prospect that either the United States of America or Soviet Russia will accept the principle of compulsory arbitration.

(*b.*) It seems impossible for any democratic country to bind itself in advance to accept compulsory arbitration in every case falling under the specific categories referred to in Article 36 of the Statute, because it might well be that any particular dispute falling within those categories was such that effect would have to be given to an adverse award by legislation, and it is impossible to guarantee in advance that the Parliament of the country concerned would be prepared to pass the legislation required in every case. On the other hand, if the jurisdiction is optional, it is always possible to submit the matter to Parliament in advance in any case where Parliamentary action might be necessary.

(*c.*) The proposed undertaking would involve the complete waiver of the right to reserve from submission to arbitration disputes touching the vital interests, independence or honour of the State. Such a waiver might, however, have most serious consequences, since it is very doubtful whether public opinion in any part of the Empire would tolerate the acceptance of an unfavourable award on a question of primary importance to that part, *e.g.*, one affecting the position of Great Britain in relation to Egypt, or the validity of restrictions on the immigration of nationals of foreign countries into the Dominions.

(*d.*) From the purely legal standpoint, the Permanent Court is not a satisfactory body for the task of adjudicating on disputes of primary importance, since it has decided not to be bound by any rules of evidence, and the absence of any such rules makes it very dangerous to give an undertaking in advance to accept decisions of the Court on any questions which may arise.

In the circumstances, it is the feeling of His Majesty's Government that, at the present moment, it would be premature to accept the compulsory arbitration of the Permanent Court in the cases contemplated in Article 36 of its Statute, and that it would be preferable, as suggested by the Government of India (see Annex), to wait until there have been a few more years' experience of the working of the Permanent

Court, and it is seen whether it has been possible to build up a form of procedure which would render it safe to accept its jurisdiction in all cases falling within the categories mentioned.

2, *Whitehall Gardens, S.W.* 1,
November 1926.

ANNEX.

Note on Recent Views expressed by Dominion Governments in regard to Compulsory Arbitration.

IN September 1924 the notice of the Dominion Governments was called to the provision contained in Article 36 of the statute establishing the Permanent Court of International Justice, under which, either at the time of signature or ratification of the protocol to which the statute is adjoined, or at a later moment, a declaration may be made that the parties recognise as compulsory *ipso facto*, and without special agreement, in relation to any other member of the League of Nations or State, accepting the same obligation, the jurisdiction of the Court in certain specified classes of legal disputes.

It was stated that no such declaration had been made on behalf of His Majesty's Government either on the 16th December, 1920, when the protocol was signed by Lord Balfour, or subsequently, and that no declaration had been made on behalf of any of the dominion members of the League, or of India. It was further stated that representations had recently been made to His Majesty's Government from parliamentary and other quarters that the time had arrived when the matter should be reconsidered; the issues raised were, however, of great importance and complexity, particularly in relation to the position of the British Empire in time of war, when acceptance of the compulsory jurisdiction of the Court would enable any foreign country, if it were similarly bound, to contest before the Court the legality of naval measures.

The only specific replies to this despatch were those received from New Zealand and the Union of South Africa.

New Zealand.

The New Zealand Government, in November 1924, stated that they strongly objected to any proposal that Great Britain should make such a declaration, particularly on the ground that upon a number of matters of international law, especially those relating to belligerent rights at sea, the view taken by continental jurists (who would, of course, form a majority on the Permanent Court) was opposed to the principles long established in England and essential to the interests of Great Britain.

Union of South Africa.

The Government of the Union of South Africa stated in October 1924 that the matter was receiving their careful consideration, and that they had come to the conclusion that it was not necessary at that stage, at all events, for them to offer any observations on the question.

The subject of compulsory arbitration was, however, referred to on several occasions in the course of correspondence regarding the Protocol for the Pacific Settlement of International Disputes, and the following expressions of opinion may be cited:—

Canada.

In a message from the Prime Minister of Canada of the 4th March, 1925, it was stated that, "as Canada believes firmly in submission of international disputes to joint enquiry or arbitration, and has shared in certain number of undertakings in this field, we would be prepared to consider acceptance of compulsory jurisdiction of Permanent Court in justiciable disputes with certain reservations and co-operation in further consideration of method of supplementing the provisions of the Covenant for settlement of non-justiciable issues."

Commonwealth of Australia.

A message from the Prime Minister of the Commonwealth, dated the 5th March, 1925, stated at length the views of the Commonwealth Government on the provisions

of the Geneva Protocol relating to compulsory arbitration. These views may be summarised as follows :—

(*a.*) The provisions of the Covenant dealing with the settlement of disputes which furnish an alternative procedure (viz., enquiry by the Council of League of Nations) appear to have advantage in elasticity and adaptation to the existing state of public opinion over the proposed machinery of compulsory arbitration.

(*b.*) The absence from the League of certain of the foremost nations of the world renders premature any endeavour at the present time to generalise the principle of compulsory arbitration.

New Zealand.

In a memorandum, dated the 6th January, 1925, signed by the then Prime Minister of New Zealand (Mr. Massey) the objections to the admission of the Permanent Court as a deciding factor in determining Great Britain's belligerent rights at sea, to which reference is made above, were developed at length. The fear was also expressed that the Permanent Court might interfere with the New Zealand immigration laws should the principle of compulsory arbitration be adopted.

Irish Free State.

A statement on the Geneva Protocol was made in the Dail by the Minister of External Affairs of the Irish Free State on the 13th May, 1925, which contained the following passage :—

> "An extension of the principle of arbitration, which serves to define and enunciate international judgment, and which relies in the last resort on the moral pressure of world opinion, and not upon the application of material sanctions, appears to us to be the most effective feasible means of attaining, at least in a large measure, the objects which the protocol has in view."

Later, in the course of the same debate, in reply to a question as to the Permanent Court of International Justice, the Minister stated :—

> "There is also what is known as the optional clause No. 36. We are considering adherence to that clause. There is one matter which had delayed our action in that, and that is, we are not quite sure whether we can already be regarded as being bound by the statute, which was ratified by Great Britain before our coming into separate existence, and before our membership of the League. It is a question of whether or not we have to ratify it on behalf of this country. When that question is cleared up, so far as I have gone into the matter, I would be entirely in favour of adopting that optional clause."

It may be noted that in July 1925 the New Zealand Government again referred to the danger of submitting questions regarding belligerent rights at sea to the Permanent Court in connection with the renewal of the Arbitration Convention with the Netherlands. It was, however, found possible to reassure the New Zealand Government that such questions could be excluded from the application of the Convention under article 1, as matters affecting the vital interests of either party, and the New Zealand Government did not press for any special action to be taken to make this clear at the time of the renewal of the convention.

In September 1924 the Government of India said :—that while desirous not to place obstacles in the way of provision of further procedure which would permit of the adjustment of differences between States and thus perhaps avoid future war, they were impressed by the need for caution and would prefer to wait till they had had several years' experience of the working of the Permanent Court of International Justice before deciding to accept clause 36 of the Statutes of the Court, as proposed in the Protocol for Pacific Settlement, either conditionally or otherwise. In any case, they could not agree to acts of the past being submitted to the jurisdiction of the Court. Moreover, they thought they would also have to exclude from its purview cases in which the vital interests, independence or honour of India were concerned. They also drew attention to certain specific difficulties with regard to China, which would be involved by the acceptance of Article 36 of the statute by the Government of India.

Printed for the Imperial Conference. November 1926.

SECRET.

Copy No. 41

E. (I.R./26) 3.

IMPERIAL CONFERENCE, 1926.

EXISTING ANOMALIES IN THE BRITISH COMMONWEALTH OF NATIONS.

MEMORANDUM BY THE IRISH FREE STATE DELEGATION.

THE principle of the absolute equality of status and the legislative, judicial and constitutional independence of the members of the British Commonwealth of Nations is now admitted beyond controversy. It is accordingly thought that it would be opportune to direct attention to some of the more outstanding anomalies and anachronisms which appear most to detract from that principle with the object of abrogating anything which in form or substance interferes with its complete application in practice.

2. The fundamental right of the Government of each separate unit of the Commonwealth to advise the King in all matters whatsoever relating to its own affairs should be formally affirmed and recognised in practice.

3. The following are instances in which that fundamental right is contravened :—

(*a.*) The claim of the British Government to control legislation of the other legislatures of the Commonwealth by means of the disallowance or reservation of the statutes of such legislature.

When the Secretary of State for Dominion Affairs receives each year or more frequently certified copies of Acts of the Dominion Parliaments, he requests the Governor-General to inform his Ministers that His Majesty will not be advised to exercise his power of disallowance in respect of these Acts. Similarly, the reservation of statutes for His Majesty's pleasure implies action solely on the advice of His Majesty's British Ministers. Those powers of veto are obsolete and should be formally abandoned.

(*b.*) The issue of exequaturs to Consuls operating within the Dominions on the advice of His Majesty's British Ministers with the counter-signature of the British Foreign Secretary.

In the case of consuls *de carrière*, the Dominions are merely informed that the exequatur is being issued. The approval of the Dominions is requested when an honorary consul is being appointed, but the exequatur issues on the advice of the British Ministers. The consular commission should be sent direct by the foreign Government to the Dominion Government, and the exequatur should be issued on the advice of His Majesty's Dominion Ministers counter-signed by the Dominion Minister for External Affairs.

(*c.*) The assumption in international treaties and conventions that the signature of the British plenipotentiary appointed on the sole advice of His Majesty's British Government binds the Dominions.

The principle should be formally accepted that no Dominion can be bound in any way except by the signature of a plenipotentiary appointed on its own advice. When there is a common plenipotentiary for two or more members of the Commonwealth, separate full powers should be issued in accordance with this principle.

4. The Governor-General at present fills a dual rôle. He is at the same time the representative of the King and the representative of the British Government, thus

giving credence to a common misapprehension that there is no distinction in practice between the British Government and the King as far as the Dominions are concerned.

Furthermore, it is not in conformity with the principle stated in paragraph i of this memorandum that a Government chosen by the people should be affected in any of its actions by the representative of another Government. Accordingly, it is suggested that his functions should be confined exclusively to representing the King. He should act solely on the advice of the Dominion Ministry, and should not be the recipient of any instructions from the British Government. He should no longer discharge any functions as the representative of the British Government or of any Department thereof, nor act as the channel of communication between the British Government and the Dominion Government. The choice of the representative of the King should lie with the Dominion Government, on whose advice alone the appointment should be made. Similar principles should prevail when a change falls to be made in the holder of the office.

5. It has been sought to impose limitations on the legislative competence of the Members of the Commonwealth of Nations other than Great Britain by insistence on the contention that the laws of such members—except where extra-territorial operation is given to them by the British Parliament—operate only within the territorial area of such member. Such a contention is inconsistent with the legislative autonomy necessarily following from equality of status. Moreover, it is nowhere expressed in any of the Constitutions of the States of the Commonwealth that there is any territorial limitation to the operation of laws duly enacted. It is obviously necessary in modern conditions that the legislatures of those States should exercise authority with extra-territorial effect when necessary for the peace, order and good government of their countries. It would be absurd, for example, to suggest that legislation making it a crime to conspire outside the Dominion against the peace, order and good government of that Dominion, or to defraud the customs of that Dominion or otherwise to violate its laws, would be invalid. It should be made clear that a law passed by the legislature of any part of the Commonwealth cannot be invalid or fail to have effect by reason merely of extra-territorial operation, or of the fact that its provisions are repugnant to the provisions of any statute passed by the British Parliament.

6. The exercise of legislative authority by the Parliament of Great Britain as regards the other members of the Commonwealth of Nations would clearly be inconsistent with the principles upon which the Commonwealth of Nations is founded. The very title of such an Act as the Colonial Laws Validity Act (which would appear from a recent judgment of the Judicial Committee of the Privy Council to be still of technical legal effect in some parts at least of the Commonwealth of Nations) implies subjection, and the doctrines embodied in that Act are subversive of the principles of autonomy and constitutional co-equality.

No law can bind a member of the Commonwealth of Nations except its own law, and the function of enacting every such law belongs exclusively as of right to the Parliament of such member.

Uniformity of laws and of administration of laws where desirable or necessary can best be secured by the enactment of reciprocal statutes based upon consultation and agreement.

7. The Royal Titles are still as they were before the separation of the Irish Free State and the United Kingdom. For that reason, and in order to emphasise the dignity of the individual nations of the Commonwealth, it is suggested that these nations should be set out by name in the King's title, which would then read as follows: King of the United Kingdom of Great Britain and of Canada, Australia, New Zealand, South Africa and the Irish Free State, Emperor of India.

In international treaties this title set out in full before, or in reference to, each one of the national plenipotentiaries on the advice of whose Government the King acts will remove all doubt about the equality of status of the Commonwealth nations, both *inter se* and *vis-à-vis* non-Commonwealth States, and will at the same time indicate the bond upon which the real unity of the Commonwealth depends.

8. The position in regard to the Judicial Committee of the Privy Council and to matters relating to Merchant Shipping is dealt with in separate memoranda (see E. 115 and E. (E.) 24 respectively).

9. The channel of Communication between Foreign Governments and the Dominions is still the British Foreign Office. It is clear from the text of Foreign Communications that Foreign Governments regard the Dominion Governments as subordinate to the British Government. This can best be illustrated by a recent and typical example. The Belgian Ambassador in London, in a letter to the British

Foreign Secretary on the 30th September last, concerning the issue of fresh exequaturs in respect of altered jurisdiction in the Irish Free State, writes as follows :—

> " Je me permets de recourir à l'obligeant intermédiaire de Votre Excellence aux fins que les titulaires de ces postes soient officiellement reconnus par les *Autorités britanniques* dans la nouvelle juridiction qui leur a été confiée."

In all matters concerning the Dominions as individual States correspondence should take place direct between the Departments of External Affairs of the Dominions and Foreign countries. The Members of the Commonwealth would, of course, keep each other informed of such correspondence in all matters of common interest in conformity with the spirit of the 1923 treaty resolutions.

Approval of this procedure should be intimated by the British Government to Foreign Governments.

Conclusion.

If the British Commonwealth of Nations is to endure as the greatest factor for the establishment of peace and prosperity throughout the world, its cohesive force must be real and permanent, whether viewed from within or without. It cannot be held together by a mere collective expression, which only serves to create doubt in the minds of Foreign Statesmen and discontent amongst the diverse nationalities of which it is made up.

The King is the real bond, and forms used in international treaties will be devoid of all meaning so long as they do not give complete expression to that reality.

The co-operation resulting from the bond of a common King will be effective only because it is free co-operation and to the extent to which it is free. Antiquated forms dating from a period when common action resulted from the overriding control of one central Government are liable to make co-operation less efficacious, because they make it seem less free.

Hotel Cecil, W.C. 2,
November 2, 1926.

Printed for the Imperial Conference. November 1926.

SECRET. **Copy No.**

E. (I.R./26) 4.

IMPERIAL CONFERENCE, 1926.

CONDUCT OF FOREIGN AFFAIRS: CONSULTATION AND COMMUNICATION.

MEMORANDUM BY THE PRIME MINISTER OF NEW ZEALAND.

THE New Zealand Government has for many years in regard to foreign affairs adopted and acted upon the principle that foreign policy must be an Empire policy, that the Secretary of State for Foreign Affairs of His Majesty's Government in London must necessarily be the Foreign Minister of the Empire, and that the Foreign Office of His Majesty's Government must be the Foreign Office of the Empire. It has appeared to us obvious that that Minister and that office are the only possible channel of negotiation between the Empire and foreign nations.

But from that point of view the Foreign Secretary and the Foreign Office must be regarded as the official mouthpieces of the Governments of the self-governing Dominions as well as of His Majesty's Government in London, and it is obvious that the Dominion Governments must be kept informed of the trend of foreign relations, the course which the Foreign Office proposes to take in certain events, and generally of all matters relating to foreign policy. The methods adopted hitherto to fulfil this essential condition have been communication through the Secretary of State for the Colonies (now Dominions) to the respective Governors-General, by telegraph in urgent matters and by post in matters of lesser importance, of such information as the Foreign Office has, and often of matter of extremely secret and confidential nature. Various suggestions have been made for the improvement and abbreviation of the methods of communication, all of which have had consideration from the New Zealand Government. Lord Milner's proposal that each Dominion Government should have one of its members resident in London and that such resident Minister should be called into council by His Majesty's Government in London has not met with general support. An alternative suggestion is that the High Commissioners should have the full status and authority held by Ambassadors of foreign nations and that consultation and communication on foreign affairs between His Majesty's Government and the Dominion Governments should take place through the High Commissioners, who should report to their respective Governments and obtain authority to express to the Foreign Office the views of their Governments. This suggestion has had a measure of support, but it does not commend itself to New Zealand.

I am anxious to aid in every possible way the effort to devise improvements in the method of consultation in the intervals between the holding of Imperial Conferences. It seems possible that the presence in London of a member of the personal staff of each Prime Minister would facilitate the desired result. One difficulty is that, while the view of each Dominion Government may be obtained by the Foreign Office with some despatch, the several views of all the Governments may be divergent and much time may be occupied in providing the opportunity for discussion and consideration by the Dominions *inter se*. The existence of a personal staff of each Prime Minister in London might to some extent obviate that difficulty. On the other hand, such an officer could serve, I think, a most useful purpose in conveying directly to his Prime Minister such additional and supplementary information as he might judge appropriate to the individual requirements of his Dominion, as to the atmosphere, antecedent facts and events, and subsidiary details of any question under consideration.

If, as I have already said, the British Foreign Office is, as in my opinion it should be, regarded as the Foreign Office of the Empire, acting in a real sense on behalf of the individual Governments of the Empire, then it is clear that the existing method of consultation—welcome as it is in my country—is at this stage scarcely sufficient to meet the position. The suggestion I have outlined above is obviously not the final solution of the problem, but I advance it as a practicable first step. If each of the self-governing Dominions can agree on the appointment of such an officer in London—attached, say, to the Cabinet staff here and accorded full facilities through the Cabinet Secretariat to ascertain and comprehend what is projected and what is in the mind of His Majesty's Government, then it might be found possible further to arrange more easily and expeditiously for some degree of Dominion interchange of views by means of these officers—a direction in which our present arrangement fails.

As a complement to the above organisation, I would strongly advocate the appointment of a member of the British Foreign Office staff to the personal staff of each Dominion Prime Minister. Such an officer would be afforded every opportunity of enquiring into and fully acquainting himself with the individual point of view of the Dominion concerned, and if it were found possible to provide for the periodical transfer of such officers—say every two or three years—from Dominion to Dominion and ultimately back to the Foreign Office, then the value of such an arrangement would be greatly increased. In the course of time, we would have, on the one hand, a corps of Dominion officials entirely familiar with the procedure of the British Foreign Office and with the attitude and point of view of His Majesty's Government, while, on the other hand, the British Foreign Office would have the benefit of a similar group of officers familiar with Dominion viewpoints.

I cannot too strongly express my sense of the vital importance of agreement between the respective members of the British Empire, and especially of agreement on foreign affairs, and I feel equally strongly that, unless some alteration is made in the present procedure, there may come a time when, in the absence of agreement, the interests of the British Empire may be materially affected.

To crystallise finally the proposals that I have put forward, I suggest—

(*a.*) The attachment to the Cabinet Secretariat in London for the purposes of communication, and to some extent of inter-Dominion consultation, of an official representative from each Dominion communicating directly with his Prime Minister.

(*b.*) The attachment to the personal staff of each Dominion Prime Minister of an officer from the British Foreign Office, and the transfer of these officials from Dominion to Dominion and ultimately back to the Foreign Office.

To these two suggestions I would add a further proposal:—

(*c.*) That facilities be afforded for the recruiting from the Dominions of a certain number of intelligent young men for service in the British Foreign Office.

It may be added that the adoption of these proposals need not interfere with the existing channel of communication through the Secretary of State for Dominion Affairs and the Governor-General of the Dominion concerned.

J. G. C.

Hotel Cecil, W.C. 2,
November 4, 1926.

Printed for the Imperial Conference. December 1926.

SECRET.

Copy No. 6

E. (I.R.—26) 5.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

LOCARNO POLICY.

THE following draft resolution, prepared by the Secretary of State for Foreign Affairs, is circulated for consideration on Monday, 8th November, 1926.

(Signed) M. P. A. HANKEY.

2, *Whitehall Gardens, S.W.*1,
November 5, 1926.

"The Conference warmly welcomes the policy embodied in the Treaty of Locarno and congratulates His Majesty's Government on its share in this successful contribution towards the promotion of the peace of the world."

Printed for the Imperial Conference. December 1926.

SECRET.

Copy No. 6

E. (I.R.—26) 6.

IMPERIAL CONFERENCE, 1926.

SYSTEM OF COMMUNICATION AND CONSULTATION.

DRAFT RESOLUTION.

THE Governments represented at the Imperial Conference are agreed that it is desirable to improve, as far as possible, the facilities for inter-communication and the reciprocal supply of information on foreign affairs, particularly by developing a system of personal contact. In this connection the representatives of the Dominions welcome the offer of His Majesty's Government in Great Britain to extend the existing system by making it a regular practice to give full information in regard to foreign affairs, &c., and to discuss foreign affairs with any person representing a Dominion (whether a Minister, High Commissioner, Liaison officer, or other official) who may be nominated by his Government for either or both purposes.

It is understood that any arrangements adopted in pursuance of this plan will be supplementary to, and not in replacement of, the system of direct communication from Government to Government, and the special arrangements which have been in force since 1918 for communications between Prime Ministers.

The methods of supply of information and of discussion between the Secretary of State for Foreign Affairs and Dominion representatives will be arranged with due regard to the great and continuous pressure of work in the Foreign Office.

2, *Whitehall Gardens, S.W.* 1,
November 10, 1926.

Printed for the Imperial Conference. December 1926.

SECRET.

Copy No. 6

E. (I.R.—26) 7.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

THE accompanying note by the Secretary of State for Dominion Affairs is circulated with reference to the discussions on the *Definition of Status* on the 9th November (see Minutes of 9th Meeting).

(Signed) M. P. A. HANKEY,
Secretary to the Committee.

2, *Whitehall Gardens, S.W.* 1,
November 11, 1926.

DEFINITION OF STATUS.

The two outstanding points on which agreement was not reached this morning were (1) the proposed insertion of the phrase "in matters national or international" and (2) the phrase "freely associated."

As regards the former the objection was not one of fact so much as of the possible misinterpretations that might be given to the phrase in some parts of the Empire, the misinterpretation being most likely to fasten itself on to the word "international." Would not the difficulty be met by language making the substance equally clear but avoiding the word "international" such as, *e.g.*, "in any aspect of their national life"?

The objection to the phrase "freely associated" is that while its object is merely to indicate the spirit of freedom of our association it might be misinterpreted in some quarters as implying a freedom to dissociate. That could be made by a small alteration such as "associated in equal freedom."

The whole statement would then run as follows: "Great Britain and the Self-Governing Dominions are autonomous communities of equal status, united by the common bond of the Crown. They stand in no subordination one to another in any aspect of their national life, but are associated in equal freedom as members of the British Commonwealth of Nations within the British Empire."

(Initialled) L. S. A.

November 9, 1926.

Printed for the Imperial Conference. December 1926.

SECRET.

Copy No. 6

E. (I.R.—26) 8.

IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

TERMS OF REFERENCE DRAFTING COMMITTEE.

REPORT.

On the questions raised by the Irish Free State Delegation with regard to disallowance and reservation of Dominion legislation, the Sub-Committee suggest that a passage might be inserted in the General Report of Lord Balfour's Committee to the Imperial Conference to the following effect :—

"It was explained by the Irish Free State Delegation that their object in bringing up these points was to elucidate the constitutional practice in relation to Canada, since it is provided by Article 2 of the Articles of Agreement for a Treaty of 1921 that 'the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada.'

"It is accordingly proposed that, apart from provisions embodied in constitutions or in specific statutes expressly requiring reservation, it should be placed on record—

"1. That it would not be in accordance with the established constitutional practice (*a*) that His Majesty's Ministers in London should advise His Majesty either to disallow an Act or to issue instructions to His Majesty's Representative to reserve a Bill passed by the Parliament of Canada or of any other Dominion or (*b*) that any such Bill should be reserved, or assent thereto withheld, by His Majesty's Representative against the advice of the Ministers of such Dominion;

"2. Generally that the constitutional practice is that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs and that advice would not be tendered to His Majesty by His Majesty's Ministers in London in any matter appertaining to the affairs of a Dominion against the views of the Dominion Government concerned.

"The appropriate procedure with regard to projected legislation in one of the self-governing parts of the Empire which may affect the interests of other self-governing parts is previous consultation between His Majesty's Ministers in the several parts concerned."

On the question raised by the Irish Free State Delegation with regard to the legislative competence of Members of the British Commonwealth of Nations other than Great Britain, and in particular to the desirability of those Members being enabled to legislate with extra-territorial effect, the Sub-Committee recommend the inclusion of the following statement in the Report of Lord Balfour's Committee :—

"As regards the legal power of the Parliament in London to legislate for the Dominions, it should similarly be placed on record that the constitutional practice is that legislation by that

Parliament applying to a Dominion could only be passed with the consent of the Dominion concerned.

"The Committee are of opinion that there are points arising out of these considerations and other aspects of general principle which will require detailed examination, and they accordingly recommend that steps should be taken by Great Britain and the Dominions to set up a Committee with terms of reference on the following lines :—

"To enquire into, report upon and make recommendations concerning—

"1. Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty or authorising the disallowance of such legislation.

"2. (*a.*) The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation ;

"(*b.*) The desirability of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order and good government of the Dominion.

"3. The principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report."

Signed on behalf of the Committee.
L. S. AMERY (*Chairman*).

2, *Whitehall Gardens, S.W.*1,
November 15, 1926.

(THIS DOCUMENT IS THE PROPERTY OF HIS BRITANNIC MAJESTY'S GOVERNMENT).

SECRET.

COPY NO. 16

S. (I.R/26).9.

IMPERIAL CONFERENCE, 1926.

COMMITTEE ON INTER-IMPERIAL RELATIONS.

The accompanying Draft Report is circulated, on Lord Balfour's instructions, for consideration at the Meeting of the Committee of Prime Ministers and Heads of Delegations to be held on Thursday, November 18th, 1926.

The Reports of (a) the Sub-Committee on Treaty Procedure, and (b) the Drafting Committee as to the proposed Expert Committee, on the operation of Dominion Legislation, have been incorporated in the present draft.

(Sgd.) M.P.A. HANKEY.

Secretary to the Committee.

2, Whitehall Gardens, S.W.1.

November 16th, 1926.

THIS DOCUMENT IS THE PROPERTY OF HIS BRITANNIC MAJESTY'S GOVERNMENT).

SECRET. COPY NO.

(I.R/26).9.

IMPERIAL CONFERENCE, 1926.

INTER-IMPERIAL RELATIONS COMMITTEE.

DRAFT REPORT.

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INTER-IMPERIAL RELATIONS COMMITTEE.

Draft Report.

I. INTRODUCTION.

We were appointed at the meeting of the Imperial Conference on the 25th of October, 1926, to investigate all the questions on the Agenda affecting Inter-Imperial Relations. Our discussions on these questions have been long and intricate. We found, on examination, that they involved consideration of fundamental principles affecting the relations of the various parts of the British Empire inter se, as well as the relations of each part to foreign countries. For such examination the time at our disposal has been all too short. Yet we hope that we may have laid a foundation on which subsequent Conferences may build.

II. STATUS OF GREAT BRITAIN AND THE DOMINIONS.

The Committee are of opinion that nothing would be gained by attempting to define the Constitution of the British Empire. Its widely scattered parts have very different characteristics, very different histories, and are at very different stages of evolution; while, considered as a whole, it defies classification and bears no real resemblance to any other political organisation which now exists or has ever yet been tried.

There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development; - we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. They are autonomous Communities within the British Empire,

equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.

A foreigner endeavouring to understand the true character of our Imperial system by the aid of this formula alone would be tempted to think that it was devised rather to make mutual interference impossible than to make mutual co-operation easy.

Such a criticism, however, completely ignores the historic situation. The rapid evolution of the Overseas Dominions during the last fifty years has involved many complicated adjustments of old political machinery to changing conditions. The tendency towards equality of status was both right and inevitable. Geographical and other conditions made this impossible of attainment by the way of federation. The only alternative was by the way of autonomy; and along this road it has been steadily sought. Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever.

But no account, however accurate, of the negative relations in which Great Britain and the Dominions stand to each other, can do more than express a portion of the truth. The British Empire is not founded solely or mainly upon negations. It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security and progress are among its objects. Aspects of all these great themes have been discussed at the present Conference; excellent results have been thereby obtained. And though every Dominion is now, and must always remain, the sole judge of the nature and extent of its co-operation,

no common cause will, in our opinion, be thereby imperilled. Equality of status, so far as Britain and the Dominions are concerned, is thus the root principle governing our inter-Imperial relations. But the principles of equality and similarity, appropriate to status, cannot be universally extended to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and questions of defence, we require also flexible machinery, machinery which can, from time to time, be adapted to the changing circumstances of the world. This subject also has occupied our attention. The rest of this report will show how we have endeavoured not only to state political theory, but to apply it to our common needs.

III. SPECIAL POSITION OF INDIA.

It will be noted that in the previous paragraphs we have made no mention of India. Our reason for limiting their scope to Great Britain and the Dominions is that the position of India in the Empire is already defined, viz., by the Government of India Act, 1919. We would also recall that by Resolution IX of the Imperial War Conference, 1917, due recognition was given to the important position held by India in the British Commonwealth of Nations. Where, in this Report, we have had occasion to consider the position of India, we have made particular reference to it.

IV. RELATIONS BETWEEN THE VARIOUS PARTS OF THE BRITISH EMPIRE.

Existing administrative, legislative and judicial forms are admittedly not wholly in accord with the position as described in Section II of this Report. This is inevitable, since most of these forms date back to a time well antecedent to the present stage of constitutional

development. Our first task then was to examine these forms with special reference to any cases where the want of adaptation of practice to principle caused, or might be thought to cause, inconvenience in the conduct of Inter-Imperial Relations.

(a) The Title of His Majesty the King.

The title of His Majesty the King is of special importance and concern to all parts of His Majesty's Dominions. Twice within the last fifty years has the Royal Title been altered to suit changed conditions and constitutional developments.

The present title, which is that proclaimed under the Royal Titles Act of 1901, is as follows:-

"George V, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India."

Some time before the Conference met, it had been recognised that this form of title hardly accorded with the altered state of affairs arising from the establishment of the Irish Free State as a Dominion. It had further been ascertained that it would be in accordance with His Majesty's wishes that any recommendation for change should be submitted to him as the result of discussion at the Conference.

We are unanimously of opinion that a slight change is desirable, and we recommend that, subject to His Majesty's approval, the necessary legislative action should be taken to secure that His Majesty's title should henceforward read: "George V, by the Grace of God, King of Great Britain, Ireland and the British Dominions beyond the Seas,

Defender of the Faith, Emperor of India".

(b) Position of Governors-General.

We proceeded to consider whether it was desirable formally to place on record a definition of the position held by the Governor-General as His Majesty's representative in the Dominions. That position, though now generally well recognised, undoubtedly represents a development from an earlier stage when the Governor General was appointed solely on the advice of His Majesty's Ministers in London and acted also as their representative.

In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that in no respect is he now considered to be the representative or agent of His Majesty's Government in Great Britain or any Department of that Government.

It seemed to us to follow that the practice whereby the Governor-General of a Dominion is the formal official channel of communication between His Majesty's Government in Great Britain and His Governments in the Dominions might be regarded as no longer wholly in accordance with the constitutional position of the Governor-General. It was thought that the recognised official channel of communication should be, in future, between Government and Government direct. The representatives of Great Britain readily recognised that the existing procedure might be open to criticism; they accepted the proposed change in principle in relation to any of the Dominions which desired it. Details were left for settlement as soon as possible after

between Great Britain and the Dominions could best be secured by the enactment of reciprocal Statutes based upon consultation and agreement.

We gave these matters the best consideration possible in the limited time at our disposal, but came to the conclusion that the issues involved were so complex that there would be grave danger in attempting any immediate pronouncement other than a statement of certain principles which, in our opinion, underlay the whole question of the operation of Dominion legislation. We felt that, for the rest, it would be necessary to obtain expert guidance as a preliminary to further consideration by His Majesty's Governments in Great Britain and the Dominions.

On the questions raised with regard to disallowance and reservation of Dominion legislation, it was explained by the Irish Free State Delegation that they desired to eludicate the constitutional practice in relation to Canada, since it is provided by Article 2 of the Articles of Agreement for a Treaty of 1921 that "the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada".

On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly requiring reservation.

(i) it would not be in accordance with established constitutional practice

(a) that His Majesty's Ministers in London should advise His Majesty the King either to disallow an Act, or to issue instructions to His Majesty's Representative to reserve a Bill, passed by the Parliament of Canada

or of any other Dominion, or

(b) that any such Bill should be reserved, or assent thereto withheld, by His Majesty's Representative against the advice of the Ministers of such Dominion;

(ii) generally that the constitutional practice is that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs and that advice would not be tendered to His Majesty by His Majesty's Ministers in London in any matter appertaining to the affairs of a Dominion against the views of the Dominion Government concerned.

The appropriate procedure with regard to projected legislation in one of the self-governing parts of the Empire which may affect the interests of other self-governing parts is previous consultation between His Majesty's Ministers in the several parts concerned.

On the question raised with regard to the legislative competence of Members of the British Commonwealth of Nations other than Great Britain, and in particular to the desirability of those Members being enabled to legislate with extra-territorial effect, we think that it should similarly be placed on record that the constitutional practice is that legislation by the Parliament at Westminster applying to a Dominion could only be passed with the consent of the Dominion concerned.

As already indicated, however, we are of opinion that there are points arising out of these considerations, and other aspects of general principle, which will require detailed examination and we accordingly recommend that steps should be taken by Great Britain and the Dominions, to set up a Committee with terms of reference on the following lines :-

"To enquire into, report upon and make recommendations concerning

(i) Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty or authorising the disallowance of such legislation.

(ii) (a) the present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation;

(b) the desirability of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order and good government of the Dominion;

(iii) the principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report."

(d) Merchant Shipping Legislation.

Somewhat similar considerations to those set out above governed our attitude towards a similar, though a special, question raised in relation to Merchant Shipping Legislation. On this subject it was pointed out that, while uniformity of administrative practice was desirable, and indeed essential, as regards the Merchant Shipping Legislation of the various parts of the Empire, it was difficult to reconcile the application, in their present form, of certain provisions of the principal Statute relating to Merchant Shipping, viz., the Merchant Shipping Act of 1894, with the constitutional status of the several members of the British Commonwealth of Nations.

evolution of the British Empire, certain inequalities had been allowed to remain as regards various questions of maritime affairs, it was essential in dealing with these inequalities to consider the practical aspects of the matter. Not only was it impossible to introduce immediate alterations in the Merchant Shipping Code (which dealt, amongst other matters, with the registration of British ships all over the world), but it was necessary, in any review of the position, to take into account such matters of general concern as the qualifications for registry as a British ship, the status of British ships in war, the work done by His Majesty's Consuls in the interest of British shipping and seamen, and the question of Naval Courts at foreign ports to deal with crimes and offences on British ships abroad. It was also worth while to take into consideration the question whether the principle of differentiation of function, to which we have already alluded, had not a special application in relation to merchant shipping questions.

We came finally to the conclusion that, following a precedent which had been found useful on previous occasions, the general question of Merchant Shipping Legislation had best be remitted to a special Sub-Conference, which could meet most appropriately at the same time as the expert Committee, to which reference is made above. We thought that this special Sub-Conference should be invited to advise on the following general lines:

"To consider and report on the principles which shall govern, in the general interest, the practice and legislation relating to merchant shipping in the various parts of the Empire, having regard to the change in constitutional procedure which has occurred since existing laws were enacted".

We took note that the representatives of India particularly desired that India, in view of the importance of her shipping interests, should be represented at the proposed Sub-Conference. We felt that the full representation of India on an equal footing with Great Britain and the Dominions would not only be welcomed, but could, very properly be given, without prejudice to the special constitutional position of India as explained in section III of this Report.

(e) Appeals to the Judicial Committee of the Privy Council.

Another matter which we discussed in which the general constitutional principle was raised, concerned the conditions governing Dominion appeals to the Judicial Committee of the Privy Council. From these discussions it became clear that it was no part of the policy of any part of the Empire represented at the Conference that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the inhabitants of the part primarily affected. It was, however, recognised, that where changes in the existing system were proposed which, while primarily affecting one part, raised issues in which other parts were also concerned, such changes ought only to be carried out after discussion and by agreement.

So far as the work of the Committee was concerned, this general understanding expressed all that was required. The question of some immediate change in the present conditions governing appeals from the Irish Free State, was not pressed in relation to the present Conference, though it was made clear that the right was reserved to bring up the matter again at the next Imperial Conference.

V. RELATIONS WITH FOREIGN COUNTRIES.

From questions specially concerning the relations of the various parts of the British Empire with one another, we

naturally turned to those affecting their relations with foreign countries. In the latter sphere, a beginning had been made towards making clear those relations by the Resolutions of the Imperial Conference of 1926 on the subject of the negotiation, signature and ratification of treaties. But it seemed desirable to examine the working of that Resolution during the last three years and also to consider whether the principles laid down with regard to Treaties could not be applied with advantage in a wider sphere.

(a) Procedure in relation to Treaties.

We appointed a special sub-committee under the Chairmanship of the Minister of Justice of Canada (The Honourable E. Lapointe, K.C.), to consider the question of treaty procedure.

The Sub-Committee, on whose report the following paragraphs are based, found that the Resolutions of the Conference of 1926 embodied on most points useful rules for the guidance of the Governments. As they became more thoroughly understood and established, they would prove effective in practice.

Some phases of treaty procedure were examined however in greater detail in the light of experience in order to consider to what extent the Resolutions of 1926 might with advantage be supplemented.

Negotiation.

It was agreed in 1926 that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments and should take steps to inform Governments likely to be interested of its intention.

This rule should be understood as applying to

so as to leave it to the other Governments to say whether they are likely to be interested.

When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Government receives no adverse comments and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its policy is generally acceptable. It must, however, before taking any steps which might involve the other Governments in any active obligations, obtain their definite assent.

Where by the nature of the treaty it is desirable that it should be ratified on behalf of all the Governments of the Empire, the initiating Government may assume that a Government which has had full opportunity of indicating its attitude and has made no adverse comments will concur in the ratification of the treaty. In the case of a Government that prefers not to concur in the ratification of a treaty unless it has been signed by a plenipotentiary authorised to act on its behalf, it will advise the appointment of a plenipotentiary so to act.

Form of Treaty.

Some treaties begin with a list of the contracting countries and not with a list of heads of states. In the case of treaties negotiated under the auspices of the League of Nations, adherence to the wording of the Annex to the Covenant for the purpose of describing the contracting party has led to the use in the preamble of the term "British Empire" with an enumeration of the Dominions and India if parties to the Convention but without any mention of Great Britain and Northern Ireland and the Colonies and Protectorates. These are only included by virtue of their

being covered by the term "British Empire". This practice, while suggesting that the Dominions and India are not on a footing of equality with Great Britain as participants in the treaties in question, tends to obscurity and misunderstanding and is generally unsatisfactory.

As a means of overcoming this difficulty it is recommended that all treaties (other than agreements between Governments) whether negotiated under the auspices of the League or not should be made in the name of Heads of States, and if the treaty is signed on behalf of any or all of the Governments of the Empire, the treaty should be made in the name of the King as the symbol of the special relationship between the different parts of the Empire. The British units on behalf of which the treaty is signed should be grouped together in the following order; Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League, Canada, Australia, New Zealand, South Africa, Irish Free State, India. A specimen form of treaty as recommended is attached as an appendix to the Committee report.

In the case of a treaty applying to only one part of the Empire it should be stated to be made by the King on behalf of that part.

The making of the treaty in the name of the King as the symbol of the special relationship between the different parts of the Empire will render superfluous the inclusion of any provision that its terms must not be regarded as regulating <u>inter se</u> the rights and obligations of the various territories on behalf of which it has been signed in the name of the King. In this connection it must be borne in mind that the question was discussed at the Arms Traffic Conference in 1925, and that the Legal Committee of that Conference laid it down that the principle to which the foregoing sentence give

expression underlies all international conventions.

In the case of some international agreements the Governments of different parts of the Empire may be willing to apply between themselves some of the provisions as an administrative measure. In this case they should state the extent to which and the terms on which such provisions are to apply. Where international agreements are to be applied between different parts of the Empire, the form of a Treaty between Heads of States should be avoided.

Full Powers.

The plenipotentiaries for the various British units should have full powers, issued in each case by the King on the advice of the Government concerned, indicating and corresponding to the part of the Empire for which they are to sign. It will frequently be found convenient, particularly where there are some parts of the Empire on which it is not contemplated that active obligations will be imposed, but where the position of the British subjects belonging to these parts will be affected, for such Governments to advise the issue of full powers on their behalf to the plenipotentiary appointed to act on behalf of the Government or Governments mainly concerned. In other cases provision might be made for accession by other parts of the Empire at a later date.

Signature.

In the cases where the names of countries are appended to the signatures in a treaty, the different parts of the Empire should be designated in the same manner as is proposed in regard to the list of plenipotentiaries in the preamble to the treaty. The signatures of the Plenipotentiaries of the various parts of the Empire should be grouped together in the same order as is proposed above.

The signature of a treaty on behalf of a part of the Empire should cover territories for which a mandate has been given to that part of the Empire, unless the

COMING INTO FORCE OF MULTILATERAL TREATIES.

In general treaties contain a ratification clause and a provision that the treaty will come into force on the deposit of a certain number of ratifications. The question has sometimes arisen in connection with treaties negotiated under the auspices of the League whether, for the purpose of making up the number of ratifications necessary to bring the treaty into force, ratifications on behalf of different parts of the Empire which are separate Members of the League should be counted as separate ratifications. In order to avoid any difficulty in future, it is recommended that when it is thought necessary that a treaty should contain a clause of this character, it should take the form of a provision that the treaty should come into force when it has been ratified on behalf of so many separate Members of the League.

The Committee think that some convenient opportunity should be taken of explaining to the other Members of the League the changes which it is desired to make in the form of treaties and the reasons for which they are desired. They would also recommend that the various governments of the Empire should make it an instruction to their representatives at International Conferences to be held in future that they should use their best endeavours to secure that effect is given to the recommendations contained in the foregoing paragraphs.

(b) Representation at International Conferences.

We also studied, in the light of the Resolutions of the Imperial Conference of 1923 to which reference has already been made, the question of the representation of the different parts of the Empire at International Conferences. The conclusions which we reached may be summarised as follows:-

(1) No difficulty arises as regards representation at conferences convened by, or under the auspices of, the League of Nations. In such conferences all members of the League are

invited, and if they attend are represented separately by separate delegations. Co-operation is ensured by the application of paragraph I (c) of the Treaty Resolutions of 1923.

(2) As regards international conferences summoned by foreign governments, no rule of universal application can be laid down, since the nature of the representation must, in part, depend on the form of invitation issued by the convening government.

(a) In conferences of a technical character, it is usual and always desirable that the different parts of the Empire should (if they wish to participate) be represented separately by separate delegations, and where necessary efforts should be made to secure invitations which will render such representation possible:

(b) Conferences of a political character called by a foreign government must be considered on the special circumstances of each individual case.

It is for each part of the Empire to decide whether its particular interests are so involved, especially having regard to the active obligations likely to be imposed by any resulting treaty, that it desires to be represented at the Conference, or whether it is content to leave the negotiation in the hands of the part or parts of the Empire more directly concerned and to accept the result.

If a Government desires to participate in the conclusion of a treaty, the method by which representation will be secured is a matter to be arranged with the other Governments of the Empire in the light of the invitation which has been received.

Where more than one part of the Empire

desires to be represented, three methods of representation are possible:-

(i) By means of a common plenipotentiary or plenipotentiaries, the issue of full powers to whom, should be on the advice of all parts of the Empire participating.

(ii) By a single British Empire delegation composed of separate representatives of such parts of the Empire as are participating in the conference. This was the form of representation employed at the Washington Disarmament Conference of 1921.

(iii) By separate delegations representing each part of the Empire participating in the Conference. If, as a result of consultation, this third method is desired an effort must be made to ensure that the form of invitation from the convening Government will make this method of representation possible.

Certain non-technical treaties should, from their nature, be concluded in a form which will render them binding upon all parts of the Empire, and for this purpose should be ratified with the concurrence of all the Governments. It is for each Government to decide to what extent its concurrence in the ratification will be facilitated by its participation in the conclusion of the treaty, as for instance by the appointment of a common plenipotentiary. Any question as to whether the nature of the treaty is such that its ratification should be concurred in by all parts of the Empire is a matter for discussion and agreement between the Governments.

(c) <u>General Conduct of Foreign Policy</u>.

We went on to examine the possibility of applying the principles underlying the Treaty Resolution of the 1923

affairs generally. It was frankly recognised that in this sphere, as in the sphere of defence, the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain. The principle of differentiation of function to which we have already alluded manifests itself, in this case, in the clearest manner. Nevertheless, practically all the Dominions are engaged to some extent, and some to a considerable extent, in the conduct of foreign relations particularly those with foreign countries on their borders. A particular instance of this is the growing work in connection with the relations between Canada and the United States of America which has led to the necessity for the appointment of a Minister Plenipotentiary to represent the Canadian Government in Washington.

We felt that the governing consideration underlying all discussions of this problem must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments. In the light of this governing consideration, the Committee agreed that the general principle expressed in relation to Treaty negotiations in Section V (a) of this Report, which is indeed already to a large extent in force, might usefully be adopted as a guide by the Governments concerned in future in all negotiations affecting foreign relations falling within their respective spheres.

(d) Issue of Exequaturs to Foreign Consuls in the Dominions.

A question was raised with regard to the practice regarding the issue of exequaturs to Consuls in the Dominions. The general practice hitherto, in the case of all appointments of Consuls de Carriere in any part of the British Empire, has been that the foreign government concerned notifies His

Majesty's Government in Great Britain, through the diplomatic channel, of the proposed appointment and that, provided that it is clear that the person concerned is, in fact, a Consul de Carriere, steps have been taken, without further formality, for the issue of His Majesty's exequatur. In the case of Consuls other than those de Carriere, it has been customary for some time past to consult the Dominion Government concerned before the issue of the exequatur.

The Secretary of State for Foreign Affairs informed us that His Majesty's Government in Great Britain accepted the suggestion that in future any application by a foreign Government for the issue of an exequatur to any person who was to act as Consul in a Dominion should be referred to the Dominion Government concerned for consideration and that, if the Dominion Government agreed to the issue of the exequatur, it would be sent to them for counter-signature by a Dominion Minister. Instructions to this effect had indeed already been given.

(e) Channel of Communication between Dominion Governments and Foreign Governments.

We took note of a development of special interest which had occurred since the Imperial Conference last met, viz. the appointment of a Minister Plenipotentiary to represent the interests of the Irish Free State in Washington, which was now about to be followed by the appointment of a diplomatic representative of Canada. We felt that most fruitful results could be anticipated from the co-operation of His Majesty's representatives in the United States of America, already initiated, and now further to be developed. In cases other than those where Dominion Ministers were accredited to the Heads of Foreign States, it was agreed to be very desirable that the existing diplomatic channels should continue to be used, as between the Dominion Governments and foreign Governments, in matters of general and political

VI. SYSTEM OF COMMUNICATION AND CONSULTATION.

(N.B. This Section is in a tentative form and still under discussion)

Sessions of the Imperial Conference at which the Prime Ministers of Great Britain and of the Dominions are all able to be present cannot, from the nature of things, take place very frequently. The system of communication and consultation between conferences becomes therefore of special importance. We reviewed the position now reached in this respect with special reference to the desirability of arranging that closer personal touch should be established between Great Britain and the Dominions, and the Dominions inter se, for the discussion of current questions of policy. Such contact alone can convey an impression of the atmosphere in which official correspondence is conducted. Development, in this respect, seems particularly necessary in relation to matters of major importance in foreign affairs where expedition is often essential, and urgent decision necessary. A special aspect of the question of consultation which we considered was that concerning the representation of Great Britain in the Dominions. By reason of his constitutional position, as explained in section IV of this Report, the Governor General can no longer be regarded as in any sense specially concerned with the interests of Great Britain. There is no one therefore in the Dominion capitals in a position to represent with authority the views of His Majesty's Government in London.

We summed up our conclusions in the following Resolution, which is submitted for the consideration of the Conference:-

"The Governments represented at the Imperial Conference are impressed with the desirability of developing a system of personal contact, both in London and in the Dominion

capitals, to supplement the present system of inter-communication and the reciprocal supply of information on affairs of common interest. The manner in which any new system is to be worked out is a matter for consideration and settlement between His Majesty's Governments in Great Britain and the Dominions, with due regard to the circumstances of each particular part of the Empire, it being understood that any new arrangements should be supplementary to, and not in replacement of, the system of direct communication from Government to Government and the special arrangements which have been in force since 1918 for communications between Prime Ministers."

VII. PARTICULAR ASPECTS OF FOREIGN RELATIONS DISCUSSED BY COMMITTEE.

It was found convenient that certain aspects of foreign relations, particularly those on which a common policy was desirable on matters outstanding at the time of the Conference, should be referred to us, since they could be considered in greater detail, and more informally than at meetings of the full Conference.

(a) Compulsory Arbitration in International Disputes.

One question which we studied was that of arbitration in international disputes, with special reference to the question of acceptance of Article 36 of the Statute of the Permanent Court of International Justice, providing for the compulsory submission of certain classes of cases to the Court. On this matter we decided to submit no Resolution to the Conference, but, whilst the members of the Committee were unanimous in favouring the widest possible extension of the method of arbitration for the settlement of international disputes, the feeling was that it was at present premature to accept the obligations under the Article in question.

Governments represented at the Imperial Conference would take any action in the direction of the acceptance of the compulsory jurisdiction of the Permanent Court, without bringing up the matter for further discussion.

(b) Adherence of the United States of America to the Protocol establishing the Permanent Court of International Justice.

Connected with the question last mentioned, was that of the adherence of the United States of America to the Protocol establishing the Permanent Court of International Justice.

The special conditions upon which the United States desired to become a party to the Protocol had been discussed at a special Conference held at Geneva in September, 1926, to which all the Governments represented at the Imperial Conference had sent representatives. We ascertained that each of these Governments was in accord with the conclusions reached by the special Conference and with the action which that Conference recommended.

(c) The Policy of Locarno.

The Imperial Conference was fortunate in meeting at a time just after the ratifications of the Locarno Treaty of Mutual Guarantee had been exchanged on the entry of Germany into the League of Nations. It was therefore possible to envisage the results which the Locarno Policy had achieved already, and to forecast to some extent the further results which it was hoped to secure. These were explained and discussed. It then became clear that, from the standpoint of all the Dominions and of India, there was complete approval of the manner in which the negotiations had been conducted and brought to so successful a conclusion. The provisions of Article IX of the Treaty of Mutual Guarantee were also fully considered, with special reference, on the one hand, to the narrow margin of difference between

obligations already undertaken under the Covenant of the League of Nations and those incurred under the Treaty, and, on the other hand, to the practical certainty that the circumstances of any crisis under which the special obligations of the Treaty would come into force would be such as to enlist the full co-operation of all parts of the Empire.

Our final and unanimous conclusion was to recommend to the Conference the adoption of the following Resolution:-

"The Conference has heard with satisfaction the statement of the Secretary of State for Foreign Affairs with regard to the efforts made to ensure peace in Europe, culminating in the agreements of Locarno; and congratulates His Majesty's Government in Great Britain on its share in this successful contribution towards the promotion of the peace of the world."

2, Whitehall Gardens, S.W.1.
November 16th, 1926.

APPENDIX.

(See Section V a)

SPECIMEN FORM OF TREATY.

The President of the United States of America, His Majesty the King of the Belgians, His Majesty the King of (... whatever title may be decided on with the concurrence of the Imperial Conference), Emperor of India, His Majesty the King of Bulgaria, etc., etc.,

.....

Desiring .....

Have resolved to conclude a treaty for that purpose and to that end have appointed as their Plenipotentiaries:

The President .....

.....

His Majesty the King of (title as above):

for Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League (of Nations),

AB.

for the Dominion of Canada,

CD.

for the Commonwealth of Australia,

EF,

for the Dominion of New Zealand,

GH.

for the Union of South Africa,

IJ.

for the Irish Free State.

KL.

for India,

MN.

.....

who, having communicated their full powers found in good and due form, have agreed as follows:

.....

.....

In faith whereof the above-named Plenipotentiaries have signed the present Treaty.

AB.....

CD.....

EF.....

GH.....

IJ.....

KL.....

MN.....

(or if the territory for which each Plenipotentiary signs is to be specified:

(For Great Britain etc.) .....AB.

(for Canada) .....CD.

(for Australia) .....EF.

(for New Zealand) .....GH.

(for South Africa) .....IJ.

(for the Irish Free State).....KL.

(for India) .....MN.)

Printed for the Imperial Conference. December 1926.

SECRET.

Copy No. 6

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IMPERIAL CONFERENCE, 1926.

Committee on Inter-Imperial Relations.

TREATY PROCEDURE SUB-COMMITTEE.

REPORT.

The Sub-Committee begs to report that it has been found desirable to give further consideration to the relations of the various parts of the British Empire in connection with the negotiation, signature and ratification of treaties.

The Resolutions of the Conference of 1923 relating to the negotiation, signature and ratification of treaties are found on most points to embody useful rules for the guidance of governments. As they become more thoroughly understood and established, they will prove effective in practice.

Some phases of treaty procedure have been examined in greater detail in the light of experience in order to consider to what extent the Resolutions of 1923 may with advantage be supplemented.

Negotiation.

It was agreed in 1923 that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments and should take steps to inform Governments likely to be interested of its intention.

This rule should be understood as applying to any negotiations which any Government intends to conduct, so as to leave it to the other Governments to say whether they are likely to be interested.

When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Government receives no adverse comments and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its policy is generally acceptable. It must, however, before taking any steps which might involve the other Governments in any active obligations, obtain their definite assent.

Where by the nature of the treaty it is desirable that it should be ratified on behalf of all the Governments of the Empire, the initiating Government may assume that a Government which has had full opportunity of indicating its attitude and has made no adverse comments will concur in the ratification of the treaty. In the case of a Government that prefers not to concur in the ratification of a treaty unless it has been signed by a plenipotentiary authorised to act on its behalf, it will advise the appointment of a plenipotentiary so to act.

Form of Treaty.

Some treaties begin with a list of the contracting countries and not with a list of Heads of States. In the case of treaties negotiated under the auspices of the League of Nations, adherence to the wording of the Annexe to the Covenant for the purpose of describing the contracting party has led to the use in the preamble of the term

"British Empire" with an enumeration of the Dominions and India if parties to the Convention but without any mention of Great Britain and Northern Ireland and the Colonies and Protectorates. These are only included by virtue of their being covered by the term "British Empire." This practice, while suggesting that the Dominions and India are not on a footing of equality with Great Britain as participants in the treaties in question, tends to obscurity and misunderstanding and is generally unsatisfactory.

As a means of overcoming this difficulty it is recommended that all treaties (other than agreements between Governments) whether negotiated under the auspices of the League or not should be made in the name of Heads of States, and if the treaty is signed on behalf of any or all of the Governments of the Empire, the treaty should be made in the name of the King as the symbol of the special relationship between the different parts of the Empire. The British units on behalf of which the treaty is signed should be grouped together in the following order: Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League, Canada, Australia, New Zealand, South Africa, Irish Free State, India. A specimen form of treaty as here recommended is attached as an appendix to this report.

In the case of a treaty applying to only one part of the Empire it should be stated to be made by the King on behalf of that part.

The making of the treaty in the name of the King as the symbol of the special relationship between the different parts of the Empire will render superfluous the inclusion of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which it has been signed in the name of the King. In this connection it must be borne in mind that the question was discussed at the Arms Traffic Conference in 1925, and that the Legal Committee of that Conference laid it down that the principle to which this foregoing sentence gives expression underlies all international conventions.

In the case of some international agreements the Governments of different parts of the Empire may be willing to apply between themselves some of the provisions as an administrative measure. In this case they should state the extent to which and the terms on which such provisions are to apply. Where international agreements are to be applied between different parts of the Empire, the form of a treaty between Heads of States should be avoided.

Full Powers.

The plenipotentiaries for the various British units should have full power, issued in each case by the King on the advice of the Government concerned, indicating and corresponding to the part of the Empire for which they are to sign. It will frequently be found convenient, particularly where there are some parts of the Empire on which it is not contemplated that active obligations will be imposed, but where the position of the British subjects belonging to these parts will be affected, for such Governments to advise the issue of full powers on their behalf to the plenipotentiary appointed to act on behalf of the Government or Governments mainly concerned. In other cases provision might be made for accession by other parts of the Empire at a later date.

Signature.

In the cases where the names of countries are appended to the signatures in a treaty, the different parts of the Empire should be designated in the same manner as is proposed in regard to the list of plenipotentiaries in the preamble to the treaty. The signatures of the plenipotentiaries of the various parts of the Empire should be grouped together in the same order as is proposed above.

The signature of a treaty on behalf of a part of the Empire should cover territories for which a mandate has been given to that part of the Empire, unless the contrary is stated at the time of the signatures.

Coming into Force of Multilateral Treaties.

In general treaties contain a ratification clause and a provision that the treaty will come into force on the deposit of a certain number

of ratifications. The question has sometimes arisen in connection with treaties negotiated under the auspices of the League whether, for the purpose of making up the number of ratifications necessary to bring the treaty into force, ratifications on behalf of different parts of the Empire which are separate Members of the League should be counted as separate ratifications. In order to avoid any difficulty in future, it is recommended that when it is thought necessary that a treaty should contain a clause of this character it should take the form of a provision that the treaty should come into force when it has been ratified on behalf of so many separate Members of the League.

If the above recommendations are accepted, some convenient opportunity should be taken of explaining to the other Members of the League the changes which it is desired to make in the form of treaties and the reasons for which they are desired.

Signed on behalf of the Sub-Committee,
(Signed) G. E. M. LAPOINTE *(Chairman)*.

2, *Whitehall Gardens*, S.W.1,
November 16, 1926.

APPENDIX.

Specimen Form of Treaty.

The President of the United States of America, His Majesty the King of the Belgians, His Majesty the King of ..... (whatever title may be decided on with the concurrence of the Imperial Conference), Emperor of India, His Majesty the King of Bulgaria, &c.....

.....

Desiring.....

Have resolved to conclude a treaty for that purpose and to that end have appointed as their Plenipotentiaries :

The President.....

.....

His Majesty the King of (title as above) :

For Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League (of Nations),
AB.

For the Dominion of Canada,
CD.

For the Commonwealth of Australia,
EF.

For the Dominion of New Zealand,
GH.

For the Union of South Africa,
IJ.

For the Irish Free State,
KL.

For India,
MN.

.....

Who, having communicated their full powers found in good and due form, have agreed as follows :

.....

.....

In faith whereof the above-named Plenipotentiaries have signed the present Treaty.

AB.....
CD.....
EF.....
GH.....
IJ.....
KL.....
MN.....

(Or if the territory for which each Plenipotentiary signs is to be specified

(For Great Britain, &c.)..... *AB*.
(For Canada).....*CD*.
(For Australia).....*EF*.
(For New Zealand).....*GH*.
(For South Africa).....*IJ*.
(For the Irish Free State)..... *KL*.
(For India).....*MN*.)

COMMITTEE ON INTER-IMPERIAL RELATIONS.

Report, Proceedings and Memoranda.

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